Supreme Court, U.S.
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IN THE

Supreme Court of The United States

October Term, 1994

Hyde Park Medical Laboratory, Inc., an Illinois Corporation,

Petitioner,

v.

Court of Claims of the State of Illinois, The Illinois Department of Public Aid, and Philip Bradley in the official capacity as Director of the Department of Public Aid,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District - Fifth Division

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Illinois Prompt Payments Act requires that the State of Illinois pay interest on late payments for goods and services provided to the State, and that the Illinois Court of Claims "shall, in its investigation of payments due claimants, provide for the interest penalties as prescribed in the Act". The questions presented to this Court are whether Petitioner was deprived of property without due process in violation of the Due Process or Equal Protection Clauses of the Fourteenth Amendment of the Constitution of the United States when:

A. The Illinois Court of Claims dismissed Petitioner's Complaint holding that its invoices were "not approved" without affording Petitioner an opportunity for an evidentiary hearing to show that the reason

asserted for dismissal was untrue;

B. The Illinois Circuit Court dismissed of Petitioner's Complaint for want of jurisdiction without conducting an evidentiary hearing or remanding the case to the Court of Claims for an evidentiary hearing;

C. The Illinois Appellate Court refused to remand the case for an evidentiary hearing, and instead affirmed the dismissal of Petitioner's Complaint without Petitioner having been afforded an evidentiary hearing;

D. The Illinois Supreme Court refused to grant review of the dismissal of Petitioner's Complaint without Petitioner having been afforded an opportunity for an evidentiary hearing; or,

E. The Illinois Department of Public Aid and Illinois Court of Claims illegally

failed to pay any and all bills in violation of the Illinois Prompt Payments Act forcing Petitioner to suffer substantial injury, damages, and losses, including loss of Petitioner's business, and the dismissal of Petitioner's Complaint without an evidentiary hearing sanctioned by Illinois Court of last resort present substantial Federal Constitutional questions and conflict with prior decisions of the Illinois Supreme Court and Illinois Appellate Courts, and with accepted and recognized principles established by this Supreme Court of the United States.

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1994

HYDE PARK MEDICAL LABORATORY, INC.,
an Illinois Corporation,

Petitioner,

v.

Court of Claims of the State of Illinois, the Illinois Department of Public Aid, and Philip Bradley in the official capacity as Director of the Department of Public Aid,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS, FIRST DISTRICT-FIFTH DIVISION

The Petitioner, Hyde Park Medical Laboratory, Inc., an Illinois Corporation, respectfully petitions for a writ of certiorari to review the judgment of the

Appellate Court of Illinois, First District-Fifth Division, in this case.

OPINIONS BELOW

The opinion of the Appellate Court of Illinois, First District-Fifth Division (App., 1-25) is reported at 259 Ill. App. 3d 889, 632 N.E. 2d 307 (1994). The order of the Supreme Court of Illinois denying the Petition for Appeal as a Matter of Right, or, in the Alternative, for Leave to Appeal (App., 27-28) is reported at 157 Ill. App. 3d 501 (1994). The orders of the Appellate Court of Illinois denying the Petition for Rehearing (App., 26), the order of the Supreme Court of Illinois denying the Motion for Leave to File Motion for Reconsideration (App., 29-30), the orders of the Circuit Court of Cook County, Illinois (App., 31-34), and the opinions and orders of the Illinois Court of Claims

(App., 35-52) are unreported.

JURISDICTION

The judgment of the Appellate Court of Illinois, First District-Fifth Division, was entered on March 31, 1994 (App., 1-25). The Court of Appeals denied a timely petition for rehearing on June 14, 1994 (App., 26). On October 6, 1994, the Supreme Court of Illinois denied the Petition for Appeal as a Matter of Right, or, in the Alternative, for Leave to Appeal (App., 27-28). On November 18, 1994, the Supreme Court of Illinois denied the Motion for Leave to File Motion for Reconsideration (App., 29). The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS

Fourteenth Amendment to the Constitution of United States:

Section 1. All persons born or

naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

42 U.S.C. § 1983, provides inter alia:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...."

CONSTITUTION OF THE STATE OF ILLINOIS

ARTICLE I
BILL OF RIGHTS

Section 2. Due Process and Equal Protection

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection of

the laws.

Section 12. Right to Remedy and Justice

Every person shall find a certain remedy in the laws for all injuries and groups which he receives on his person, privacy, property or reputation. He shall obtain justice by law, freely, completely and promptly.

Section 15. Right to Eminent Domain

Private property shall not be taken or damaged for public use without just compensation as provided by law. Such compensation shall be determined by a jury as provided by law.

ARTICLE VI
THE JUDICIARY

Section 4. Supreme Court - Jurisdiction

(a) The Supreme Court may exercise original jurisdiction in cases relating to revenue, mandamus, prohibition or habeas corpus and as may be necessary to the complete determination of any case on review.

Section 6. Appellate Court - Jurisdiction

Appeals from final judgments of a Circuit Court are a matter of right to the Appellate Court in the Judicial District in which the Circuit Court is located except in cases appealable directly to the Supreme Court and except that after a trial on the merits in a criminal case, there shall be

no appeal from a judgment of acquittal. The Supreme Court may provide by rule for appeals to the Appellate Court from other than final judgments of Circuit Courts. The Appellate Court may exercise original jurisdiction when necessary to the complete determination of any case on review. The Appellate Court shall have such powers of direct review of administrative action as provided by law.

Section 9. Circuit Courts - Jurisdiction

Circuit Courts shall have original jurisdiction of all justiciable matters except when the Supreme Court has original and exclusive jurisdiction relating to redistricting of the General Assembly and to the ability of the Governor to serve or resume office. Circuit Courts shall have such power to review administrative action as provided by law.

Illinois Revised Statutes (1976), ch. 127

PAYMENT FROM STATE FUNDS FOR GOODS OR SERVICES
(Emphasis Supplied)

AN ACT to require prompt payments by the State of Illinois for goods or services. Approved Dec. 19, 1975, (By P.A. 79-1182), eff. July 1, 1976.

132.401 Application of Act

Section 1. This Act applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General

Assembly, for goods or services furnished to the State.

132.402. Approval of bill -- Notice upon disapproval

Section 2. The appropriate State official or agency receiving the goods or services must approve or disapprove a bill from a vendor for goods or services furnished the State within 30 days after the receipt of such bill or within 30 days after the date on which goods or services were received, whichever is later. Written notice shall be mailed to the vendor immediately if a bill is disapproved.

132.403. Payment of bill -- Penalty for late payment

Section 3. Any bill approved for payment under Section 2 must be paid within 60 days of the date of approval. If payment is not made within this 60 day period an interest penalty of 1% of any amount approved and unpaid shall be added for each month or fraction thereof, after the end of the 90 day period, until final payment is made.

If the State official or agency whose approval is required for any bill fails to approve or disapprove that bill within the period provided for approval by Section 2, the penalty for late payment of that bill shall be computed from the date 90 days after the receipt of that bill or the date 90 days after the goods or services are received, whichever is later.

132.404. Examination of Voucher

Section 4. Neither Section 2 nor Section 3 shall be construed to deprive the Comptroller of his power to examine vouchers as specified in the Comptroller Act.

Illinois Revised Statutes (1988), ch. 127

PAYMENT FROM STATE FUNDS FOR GOODS OR SERVICES
(Emphasis supplied)

AN ACT to require prompt payments by the State of Illinois for goods or services, P.A. 79-1182, approved Dec. 19, 1975, eff. July 1, 1976.

132.401 Application of Act

Section 1. This Act applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General Assembly, for goods or services furnished to the State. Except as provided in Section 2.1, for purposes of this Act, "goods or services furnished to the State" include but are not limited to medical assistance provided to public aid recipients and reimbursed from State funds under Articles V, VI and VII of The Illinois Public Aid Code.

For the purposes of this Act, "appropriate State official or agency" is defined as the Director or Chief Executive of his designee of that State agency or department or facility of such agency or

department.

Amended by P.A. 85-1159, Sec. 2-5, eff. August 4, 1988.

132.402. Approval of bill or invoice -- Notice upon disapproval

Section 2. The appropriate State official or agency receiving the goods or services must, except as provided in Section 2.1, approve or disapprove a bill or invoice from a vendor for goods or services furnished the State within 30 days after the receipt of such bill or invoice, within 30 days after the date on which the goods or services were received by the agency, within 30 days after the date specified in any lease provision, or within 30 days after the date specified on which the appropriation from which the payment is to be made becomes law, whichever is later. Written notice shall be mailed to the vendor immediately after receipt of such goods or services if a bill or invoice for such goods or services is disapproved for any reason.

Amended by P.A. 85-1159, Sec. 2-5, eff. Aug. 4, 1988.

132.403. Payment of bill -- Penalty for late payment

Section 3. Any bill approved for payment under Section 2 must be paid or the payment mailed to the payee within 30 days of the date of approval, except in the case of bills approved for payment from the Office Supply Revolving Fund, the Paper and

Printing Revolving Fund, the Statistical Services Revolving Fund, the Communication Revolving Fund, and the State Garage Revolving Fund in which case the bill must be paid or the payment mailed to the payee within 60 days of the date of approval. If payment is not made or mailed to the payee within this 30 day period or 60 day period, whichever is applicable, an interest penalty of 2% of any amount approved and unpaid shall be added for each month or fraction thereof, after the end of this 30 or 60 day period, whichever is applicable until final payment is made.

If the State official or agency whose approval is required for any bill fails to approve or disapprove that bill within the period provided for approval by Section 2, the penalty for late payment of that bill shall be computed from the date 45 days after the receipt of that bill or the date 45 days after the goods or services are received whichever is later.

Amended by P.A. 83-932, Sec. 2, eff. Nov. 2, 1983; P.A. 83-1341, Sec. 2, eff. Sept. 7, 1984.

132.403-1. Interest penalty

Section 3-1. In any instance where a State official or agency is late in payment of a Vendor's bill or invoice properly approved in accordance with the Act, and different late payment terms are not reduced to writing as a contractual agreement, the State official or agency shall pay the interest penalty required by this Act to the appropriate vendor.

However, the vendor must initiate a written request for the interest penalty when such interest is due and payable. The request shall include a description of the original transaction, including invoice date, invoice amount and the date the bill was presented to the official or agency. Such interest shall be paid by separate warrant from the same appropriation line item as that from which the principal is paid.

The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act.

Added by P.A. 85-348, Sec. 1, eff. Jan. 1, 1988.

132.404. Examination of vouchers

Section 4. Neither Section 2 nor Section 3 shall be construed to deprive the Comptroller of his power to examine vouchers as specified in the Comptroller Act.

132.405. Interest-Invoice or voucher

Section 5. The State invoice or voucher shall indicate that payment of interest may be available for failure to comply with this Act.

Added by P.A. 85-159, Section 2-5, eff. Aug. 4, 1988.

132.406. Vendor's waiver of penalty for late payment

Section 6. A State official or agency may not request any vendor to waive his rights, under this Act, to recover a penalty for late payment as a condition of, or inducement to enter into, any contract for goods or services.

Added by P.A. 85-1159, Section 2-5, eff. Aug. 4, 1988.

STATEMENT OF THE CASE

This is a petition for a writ of certiorari from the dismissal of Petitioner's Complaint by the Illinois Court of Claims, finding that the invoices were "not approved" without an evidentiary hearing and denying Petitioner's request for an evidentiary hearing to prove that the court finding upon which the complaint was dismissed was untrue, that all invoices or bills were in fact approved, and that under the Illinois Prompt Payments Act failure to approve or disapprove a bill or invoice would still entitle a claimant to the interest penalty, in the case of Hyde

Park Medical Laboratory Inc., v. State of Illinois and the Illinois Department of Public Aid, No. 89 CC 3041, (App. 45-52); (2) from the dismissal of Complaint for Declaratory Judgment and Writ of Mandamus and/or Certiorari to compel Respondent Illinois Court of Claims to fulfill its statutory obligations under the Prompt Payments Act and/or to afford Petitioner an evidentiary hearing, by the Circuit Court of Cook County, Illinois for want of jurisdiction without affording Petitioner an evidentiary hearing and without remanding the case for an evidentiary hearing, in case No. 91 CH 2302, (App. 31-34); (3) from the decision and judgment of Appellate Court of Illinois affirming the Circuit Court in its dismissal of Petitioner's Complaint without a evidentiary hearing for want of

jurisdiction and refusal to remand the case for evidentiary hearing, in appeal No. 1-91-3886, (App. 1-26); and (4) from the denial by Supreme Court of Illinois of Petitioner's Petition for Appeal as a Matter of Right, or, in the Alternative, for Leave to Appeal, and denial of its subsequent Motion for Leave to File Motion for Reconsideration, in appeal No. 77554 (App. 27-30).

On August 22, 1988, the Respondent Illinois Court of Claims, in the case of Hyde Park Medical Laboratory, Inc., an Illinois Corporation v. State of Illinois, Court of Claims No. 6779, filed in June, 1972, issued an Opinion wherein it was "ordered, adjudged and decreed" that the Petitioner herein be awarded the amount of $340,681.00 for medical laboratory services rendered to the Respondent Illinois

Department of Public Aid from December 31, 1969 through May 31, 1971 (App., 35-40). The aforesaid Opinion and Award did not include any pre-award interest, despite the prayer therefore in the complaint and repeated motions by Petitioner requesting such relief, including Petitioner's Motion for Rehearing, Reconsideration, and Modification which Motion was denied by Order of November 7, 1988 (App., 41-44).

On March 28, 1989, Petitioner filed a second complaint in the Court of Claims, Court of Claims No. 89 CC 3041, as a separate and distinct claim for the interest due and owing mandated by statute, citing, inter alia: The Illinois Prompt Payments Act, Ill. Rev. Stats., ch. 127, pars. 132.401, 132.402, 132.403 and 132.403-1, which from its initial enactment in 1976 expressly provided for interest on

late payments for goods and services provided to the State of Illinois (supra at 5-7), and, effective January 1, 1988, mandated that (supra at 10):

> "The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act."

The Petitioner also relied upon Article I, Sections 2, 12, and 15 of the Illinois Constitution, and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States; and the opinions of the Supreme Court of Illinois in City of Springfield v. Allphin, 82 Ill.2d 571, 580 (1980), and In Re Special Education of Steven Walker v. Cronin, 131 Ill.2d 300 (1989).

On December 7, 1990, Respondent Illinois Court of Claims entered an Opinion dismissing the aforesaid complaint holding

that the State's Prompt Payments Act did not apply to Petitioner because Petitioner's claims were not "properly approved" by the Department of Public Aid (App., 45-49). Petitioner filed a Motion for Rehearing, Reconsideration, Modification, Grant of Summary Judgment and Entry of Award Prayed for in the Complaint with respect to the December 7, 1990, opinion, requesting, inter alia, an evidentiary hearing with respect to certain purported "findings" upon which Illinois Court of Claims based its December 7, 1990, opinion, which Motion for Rehearing, etc., was denied by the Court of Claims on June 12, 1991 (App., 50).

Accompanying the aforesaid order denying the Motion for Rehearing, etc., was a letter advising Petitioner "If you disagree with this decision, you are

entitled to a hearing or review, provided you submit a written request within thirty days...". Accordingly, on July 9, 1991, Petitioner filed a Request for Evidentiary Hearing with the Court of Claims requesting the opportunity to prove that the claims submitted by Petitioner to Respondent Department of Public Aid were properly approved and/or not disapproved and, in the alternative, that the Court of Claims, by its Opinion and Award of August 22, 1988, had determined that the Department of Public Aid's failure to make payment of Petitioner's claims was illegal, and therefore, Petitioner should be awarded interest and/or interest penalty. On September 6, 1991, the Court of Claims denied Petitioner's Request for an Evidentiary Hearing (App., 51-52).

On March 13, 1991, Petitioner filed in

the Circuit Court of Cook County, Illinois, a Complaint or Declaratory Judgment, Mandamus and Other Relief, requesting a declaratory judgment and the issuance of a writ of mandamus and/or certiorari to declare, compel, and command the Respondents to their statutory and/or constitutional duties and obligations to Petitioner under the Illinois Prompt Payments legislation, and the Illinois and United States Constitutions, Hyde Park Medical Laboratory, Inc. v. Court of Claims of the State of Illinois, the Illinois Department of Public Aid, and Philip Bradley, in his official capacity as Director of the Illinois Department of Public Aid, No. 91 CH 02302 (Excerpts in App., 59-60). On May 6, 1991, Respondents filed their Motion to Dismiss; Petitioner filed memoranda in Response (Excerpts in

App., 61-63). On September 9, 1991, the Circuit Court granted the Respondents' Motion to Dismiss for "lack of jurisdiction" (App., 31-32).

On October 9, 1991, Petitioner filed a Motion for Reconsideration (Excerpts in App., 64-65). The Circuit Court denied Petitioner's Motion for Reconsideration on November 12, 1991 (App., 33-34). On December 10, 1991, Petitioner filed a Timely Notice of Appeal, and an Amended Notice of Appeal on December 12, 1991.

On March 31, 1994, the Appellate Court of Illinois, First District - Fifth Division, Case No. 1-91-3886, entered its Opinion affirming the judgment of the Circuit Court of Cook County, Illinois (App., 1-25), stating, inter alia, and contrary to the record (App., 24-25):

> Plaintiff contends that it should have been granted an

> additional hearing specifically on the issue of whether its invoices were "approved." Plaintiff argues that it should have had the opportunity to prove that the invoices were approved. We find no due process violation in the court of claims refusal to grant an additional hearing. It is clear from the court of claims' opinion that it considered the very issue on which plaintiff seeks to be heard; the court determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise. Accordingly, the circuit court did not abuse its discretion in failing to order the court of claims to provide an additional hearing.

See Excerpts from Petitioner's Brief and Petition for Rehearing filed in the Appellate Court of Illinois (App., 66-80).

On June 14, 1994, the Appellate Court of Illinois denied the Petition for Rehearing (App., 26).

On October 6, 1994, the Supreme Court

of Illinois denied the Petition for Appeal as a Matter of Right, Or, In The Alternative, For Leave To Appeal (App., 27-28)[See Excerpts from said Petition for Appeal, and Petitioner's Motion for Reconsideration that Petitioner moved for leave to file (App., 81-105)]. On November 18, 1994, the Supreme Court denied Petitioner's Motion for Leave to File Motion for Reconsideration (App., 29).

As established by the aforesaid opinions and orders and the excerpts from the briefs and motions submitted to the Circuit Court of Cook County, Illinois, the Appellate Court of Illinois and the Supreme Court of Illinois (App., 59, et seq.), the federal questions sought to be reviewed were timely and properly raised so as to give this Court jurisdiction to review the judgment on a writ of certiorari.

REASONS RELIED UPON
FOR ALLOWANCE OF THE WRIT

I. LEAVE TO APPEAL SHOULD BE GRANTED BY REASON OF THE GENERAL IMPORTANCE OF THE QUESTIONS PRESENTED BY THE ERRONEOUS DECISION

This Petition for Writ of Certiorari is of general importance because this Court's decision will determine whether all vendors to the State of Illinois will be denied of their property and rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States in clear conflict with applicable decisions of this Court. The case involves thousands of vendors and millions of dollars that those vendors have been unlawfully and unjustly deprived, wrongfully causing substantially injury, damage and loss.

Review by certiorari is appropriate in the case at bar under Rule 10(1) (b) and/or

(c) of the Rules of this Supreme Court of the United States by reason that this case presents substantial Federal questions that should be settled by this Court, in that the dismissal of the Complaint herein on the basis that Petitioner's invoices were "not approved" without affording Petitioner the opportunity for a evidentiary hearing to show that the dismissal of the Complaint was erroneous because all of the invoices were in fact approved, and further denying a subsequent Petition for a evidentiary hearing to prove that the Court findings were untrue and not supported by facts or evidence, and thus, condemning Petitioner to suffer grevious injury and loss, by the deprivation of rights and property without due process in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of

the United States, and creating the conflict between the accepted and recognized principles established by this Court in Goldberg v. Kelly, 397 U.S. 254, 270 (1970), wherein this Court held that: "... where governmental action seriously injures an individual and the reasonableness of the action depends on fact findings, the evidence used to prove the government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue." See also Armstrong v. Manzo, 380 U.S. 543, 552 (1965).

This Court's opinion will assure that these vendors and claimants before the Illinois Court of Claims Circuit Court, Appellate Court, and Supreme Court are no longer deprived of their procedural due process rights and property under the Due

Process Clause of the Fourteenth Amendment to the Constitution of the United States by requiring a due process hearing before denying interest penalties under the Illinois Prompt Payments Act.

In addition, this Court's opinion will also assure that Illinois courts do not abdicate their constitutional and judicial responsibility to interpret and apply the clear and unequivocal laws of the State of Illinois, and by such refusal or failure vitiate those laws, and thereby deprive the citizens of the State of Illinois of their property without due process of law.

The express and unequivocal provisions of the Prompt Payments Act will be complied with by the Court of Claims in rendering awards for all claims for thousands of vendors doing millions of dollars of business with the State of Illinois, i.e.,

whether "The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act." The case will also determine whether the Court of Claims can avoid this unambiguous statutory mandate by ignoring both that obligation and its other statutory obligation to award such interest if the State official or agency fails to approve or disapprove of the bill for goods or services within the time limitations set forth in the Act, or is found to have improperly failed to approve or wrongfully disapproved, or can refuse to award interest on those bills it finds that the State official or agency has not "properly" approved without affording the vendors an opportunity for an evidentiary hearing to dispute those "findings".

Since 1976, the Illinois General Assembly has attempted to provide protection and a remedy to the vendors of the State as an incentive to provide goods and services without the concern that they may not get paid for a considerable period of time. As is manifested by this case, the Court of Claims has been recalcitrant, obdurate, and incorrigible with respect to its statutory obligations. This Court's decision will be significant to all vendors of the State of Illinois, will require the Illinois Court of Claims and Illinois courts to compel compliance with the statutorily mandated interest penalties for late payment of their bills and invoices justly due and owing, and will influence their willingness to provide goods and services to the State of Illinois.

This Court's opinion will also involve

substantial sums of money that the vendors providing goods and services to the State of Illinois have been unconstitutionally deprived of, all in violation of their equal protection and due process rights under the Fourteenth Amendment to the Constitution of the United States.

II. THE DECISIONS SOUGHT TO BE REVIEWED ARE CLEARLY ERRONEOUS

This argument presents the precise issues to be resolved in five parts, which, when considered conjunctively, demonstrate clearly that Writ of Certiorari should be granted in cases involving principles the settlement of which is of importance to the Public, and, in cases where a state court has decides a federal question in a way that conflicts with applicable decisions of this court.

The Illinois Prompt Payments Act

expressly requires that the State of Illinois pay interest on late payments for goods and services provided to the State, and that the Illinois Court of Claims "shall, in its investigation of payments due claimants, provide for the interest penalties as prescribed in the Act."

A. THE DISMISSAL BY THE ILLINOIS COURT OF CLAIMS OF PETITIONER'S COMPLAINT HOLDING THAT THE INVOICES WERE "NOT APPROVED" WITHOUT AFFORDING PETITIONER AN OPPORTUNITY FOR AN EVIDENTIARY HEARING TO SHOW THAT THE REASON GIVEN FOR DISMISSAL WAS UNTRUE DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Contrary to the aforesaid "finding", Petitioner was <u>never</u> afforded an evidentiary hearing by or before the Illinois Court of Claims on the issue of whether its invoices were "approved" (even though under the statute the <u>failure</u> to approve or disapprove the invoices results

in entitlement to the interest penalty). The record is devoid of any evidence of such an evidentiary hearing by reason that no hearing (or even oral argument) occurred either on the motion for reconsideration of the initial award, or in the separate claim filed with respect thereto. The only hearing was the hearing whereat Petitioner proved 100% of its claims, without any opposing evidence, not a hearing with respect to the issue of approval. The record does support a factual determination that Petitioner requested an evidentiary hearing on the issue of approval. The Petitioner contended that its invoices were in fact "approved", and requested an evidentiary hearing for the purpose of adducing evidence in support of its contention. This request was (twice) denied. Petitioner received no evidentiary

hearing. It was impossible for the Respondent Court of Claims, or for the Appellate Court to conclude, upon this record that "approval was lacking and no additional evidence from Petitioner could prove otherwise" (App., 1-26). Petitioner most respectfully submits that this conclusion is contrary to our most fundamental concepts of due process, [Armstrong v. Manzo, 380 U.S. 543, 552 (1965); Goldberg v. Kelly 397 U.S. 254, 270 (1970); and Boddie v. Connecticut, 401 U.S. 371, 377 (1971)].

In addition, the Petitioner respectfully submits that the entire issue of approval was an artifice created by the Respondent Court of Claims to avoid the mandate of the Illinois Legislature. More particularly, the Prompt Payments Act has at all times required payment of the

interest penalty irrespective of whether the bills or invoices have been "approved" (1976), or "properly approved in accordance with this Act" (1988), or whenever the State official or agency "fails to approve or disapprove" that bill within the thirty (30) day period provided for approval under Section 2 of every Act since the inception of the law.

Determinatively, the record is completely devoid of any "disapproval" of the Petitioner's invoices. The Petitioner was only informed that its invoices were being held "pending investigation". The Department never informed Petitioner that its invoices were disapproved, it simply failed to pay the bills. Following this failure [not a "refusal" as indicated by the Appellate Court Opinion, (App., 1-26)], the Petitioner filed its claim. In

rendering its opinion, the Respondent Court of Claims deceptively stated (Opinion, December 7, 1990, (App., 47-48.): "Ill. Rev. Stat. 1987, ch. 127, par. 132.403-1, relied upon by claimant, provides:

> "In any instance where a State official or agency is late in payment of a vendor's bill or invoice <u>properly approved</u> in accordance with this Act ... the State official or agency shall pay the interest penalty... emphasis supplied."

The Court of Claims intentionally ignored the operative statutory language, and thus the issue.

Second, Petitioner respectfully notes the manifest incongruity of the aforesaid opinion in that a wrongful refusal (much less a wrongful failure as in the instant case) to pay bills and invoices found justly due and owing will, under the Respondent Court of Claims' "reasoning", result in no interest being received by the

aggrieved vendor. Apparently, it is only where the State officials (rightly or wrongly) affirmatively acknowledge the indebtedness will interest be awarded. Accordingly, the consequence of a wrongful denial or failure to pay is the forfeiture of the statutorily mandated relief. This makes no sense.

Third, as is noted in the Court of Claims' Opinion, Petitioner sought an evidentiary hearing whereat proof would be adduced that its bills and invoices were properly approved. However, Petitioner never was afforded a hearing of any type affording the opportunity to prove that the purported "factual" basis for the Court of Claims refusal to award interest was untrue. The Respondent Court of Claims' interpretation of the Illinois Prompt Payments Act had the effect of precluding

Petitioner from obtaining statutorily mandated interest on the wrongfully and illegally withheld payments required in the Illinois Public Aid Code, Ill.Rev.Stat. ch. 23, Section 12-4.25 (F) (App., 53) (1977), where Respondents were required to pay all bills submitted within 120 days of the initiation of the type of proceeding which the laws of the State of Illinois required Respondents to conduct in order to withhold payments. Respondents failed to pay Petitioner within 120 days of December 1, 1977, without the statutory authority to do so. Further, prior to the aforesaid statute, the Supreme Court of Illinois in Bio-Medical Laboratories, Inc. v. Trainor 68 Ill.2d 540, 548, (1977) held that suspension of participation, and thus withholding payments, was without statutory authority.

Since an evidentiary hearing was never held on whether Petitioner's claims were "approved" or "properly approved" by the Department of Public Aid despite Petitioner's repeated requests for such a hearing to show that the bills and invoices were in fact approved, the dismissal of Petitioner's Complaint deprived Petitioner of rights and Property without due process in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

B. THE DISMISSAL BY THE ILLINOIS CIRCUIT COURT OF PETITIONER'S COMPLAINT FOR WANT OF JURISDICTION WITHOUT AFFORDING PETITIONER AN OPPORTUNITY FOR A EVIDENTIARY HEARING OR REMANDING THE CASE TO THE COURT OF CLAIMS FOR A EVIDENTIARY HEARING WHEREIN PETITIONER COULD SHOW THAT THE REASON GIVEN FOR DISMISSING THE COMPLAINT WAS UNTRUE DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

Contrary to the opinion of the Illinois Circuit Court in dismissing of Petitioner's Complaint for want of jurisdiction, Petitioner contends that the Circuit Court did have jurisdiction and that the dismissal of the Complaint deprived Petitioner of rights and property without due process in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States. Petitioner's Complaint sought declaratory judgment, a writ of mandamus, and/or common law writ of certiorari, and relief under the Illinois Constitution 1970, Art. VI, Secs. 4, 6, and 9 and the Fourteenth Amendment to the Constitution of the United States. These are appropriate and legally authorized causes of action to compel respondents to comply with their statutory

responsibilities and obligations. In Re Special Education of Steven Walker, 131 Ill.2d 300, 306, (1989); City of Springfield v. Allphin, 82 Ill.2d 571, 578, (1980); Bio-Medical Laboratories v. Trainor, 68 Ill.2d 540, 548 (1977); League of Women Voters of Peoria v. The County of Peoria, 121 Ill.2d 236, 243, (1988); Rossetti Constructing Co. v. Court of Claims, 109 Ill.2d 72, 78, 80, (1985). More particularly, in City of Springfield v. Allphin, 82 Ill.2d at 571, the Illinois Supreme Court specifically stated that "...(W)hen the legislature intends to impose liability on the State for interest it affirmatively declares that the burden will fall on the sovereign. (E.g., Ill. Rev. Stat., ch. 127, par. 132.403)", (1976) specifically referring to the very statute relied upon by Petitioner herein. Cf. In

Re Special Education of Steven Walker, supra, 131 Ill.2d at 306 and Illinois State Board of Dental Examiners v. People ex rel. Cooper, 123 Ill. 227, (1887).

Significantly, the Illinois Prompt Payments Act expressly provided for the contingency of a failure, refusal, or neglect to approve or disapprove a bill. Under such circumstances, the original Act provided (Ill. Rev. Stats., ch. 127, par. 132.403), (1976):

> If the State official or agency whose approval is required for any bill fails to approve or disapprove that bill within the period provided for approval by Section 2, the (interest) penalty (of 1% for each month or fraction thereof) for late payment of that bill shall be computed from the date 90 days after receipt of that bill or the date 90 days after the goods or services are received, whichever is later.

The interest percentage increased and days for computation decreased as the Illinois General Assembly became increasingly more

frustrated with the State's failure to pay its obligations, until the present 2% and 45 day computation.

In further frustration (as is evident from the legislative history) with the State of Illinois and the Court of Claims, the General Assembly mandated the Court of Claims to perform its statutory duty by adding the following to Section 3-1 (P.A. 85-348; effective January 1, 1988; emphasis added):

> **The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act.**

Determinatively, under the Act, bills do not have to be approved for the interest penalty apply, i.e., the mere failure to approve these bills is sufficient for the imposition of the interest penalty. Moreover, Petitioner respectfully submits

that the amendment should have been construed in a manner consistent with the legislative intent of both the Act and amendment--to effect prompt payment of all the State's obligations. See generally, Bilek v. Board of Education of Berkeley School District No. 87, 61 Ill.App.3d 323 (1978). However, even if both bills and invoices must be "properly approved in accordance with this Act," the failure to approve or disapprove a bill "whose approval is required", should be construed as being "approved in accordance with this Act". Otherwise, legitimate and justly due and owing bills, such as those of the Petitioner, that are neither expressly approved or disapproved, will not receive the interest penalty for late payment. This would not only be illogical -- refusing to pay interest to vendors whose

justly due and owing bills are wrongfully not paid (or even if disapproved), or not acted upon, but in direct contravention and derogation of the purposes of both the Act and amendments. It would also constitute and effect a manifest injustice.

The Respondent Illinois Court of Claims should have awarded the interest "as prescribed in this Act." The Court of Claims not only disregarded the law, they disregarded the law mandating that they follow the law. This Court is respectfully referred to the language of the Illinois Supreme Court in Dozoretz v. Frost, 145 Ill.2d 325, (1991):

> "A court may not read a limitation into a statute which the legislature has not seen fit to enact nor may it, by subtle construction, alter the plain meaning of the words employed." (People v. Larson, 132 Ill.App.3d 594, 596, (1985)). In this case the meaning of the statutory text is clear and unambiguous."

The legislation involved in the present case imposed no new obligation, nor even any new procedure or remedy. The express obligation to pay interest, the procedure, and remedy have existed since the enactment of the Prompt Payments Act in 1976. The statutory obligation of the State to promptly pay its bills for goods and services existed long prior to Petitioner's services. The legislative history and a fair reading of the statute reveal that the 1988 amendment was a directive by the General Assembly to the State mandating that it comply with its prior obligations, and, upon the failure of the State to effect payment, that the Court of Claims "shall" award the required remedy. The use of the word "shall" is generally regarded as being mandatory. Henderson v. Hudson, 121 Ill.App.3d 780,

785 (1984). The State courts should have enforced those unequivocal mandates.

Petitioner most respectfully submits that the dismissal of the instant Complaint by the Circuit Court for want of jurisdiction contrary to the most fundamental concept of due process, and clearly contrary to this Court's holdings in Armstrong v. Manzo, 380 U.S. 543, 552, (1965); Goldberg v. Kelly, 397 U.S. 254, 270, (1970); and Boddie v. Connecticut, 401 U.S. 371, (1971),

C. **THE REFUSAL BY THE ILLINOIS APPELLATE COURT TO REMAND THE CASE FOR EVIDENTIARY HEARING, AND AFFIRMANCE OF THE DISMISSAL OF PETITIONER'S COMPLAINT WITHOUT PETITIONER HAVING BEEN AFFORDED AN EVIDENTIARY HEARING TO SHOW THAT THE REASON GIVEN FOR DISMISSING THE COMPLAINT WAS UNTRUE DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.**

On appeal the Illinois Appellate Court affirmed the dismissal of Petitioner's Complaint by the Illinois Court of Claims holding that Petitioner's invoices were "not approved" without affording Petitioner the opportunity to show that the invoices were approved and that the basis for dismissing the Complaint was not true (App., 45-52).

The Illinois Appellate Court also affirmed the dismissal by the Illinois Circuit Court of Petitioner's Complaint for declaratory judgment and/or writ of mandamus and/or writ of certiorari, for want of jurisdiction, instead of conducting an evidentiary hearing or remanding the case for a evidentiary hearing on the issue of whether the invoices were approved and for other relief (App., 31-34). The Illinois Appellate Court deprived

Petitioner of rights and Property without due process in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution to the United States.

Contrary to the "finding" of the Appellate Court, the principles governing entitlement to declaratory judgment are well established under Section 2-701 of the Illinois Code of Civil Procedure (Declaratory Judgment), Ill. Rev. Stats., ch. 110, par. 2-701 (App., 54). Office of the Lake County State's Attorney v. Illinois Human Rights Commission, 200 Ill.App.3d 151, 558 N.E. 2d 668, 671, (1990). Stone v. Omnicom Cable Television of Illinois, Inc., 131 Ill.App.3d 210, 475 N.E.2d 223, 227, (1985); Kerr Steamship Company, et al. v. Chicago Title & Trust Co., 120 Ill.App.3d 998,

1003, (1983); Safeco Insurance Company v. Brimie 163 Ill.App.3d 200, 516 N.E.2d 577, 579, (1987); and Greene v. Gust, 26 Ill. App.2d 2, 5-6, (1960).

Therefore, the Circuit Court had jurisdiction to determine the respective rights of the parties on the merits and enter declaratory judgment accordingly.

Moreover, it is equally well settled that "The purpose of the writ of certiorari is in all cases to prevent injustice." People ex rel. Fosse v. Allman, 329 Ill.App. 296, 299, (1946). "[A writ of certiorari] is awarded when inferior tribunals are shown to have exceeded their jurisdiction, or in cases where they have proceeded illegally and no appeal is allowed and no other mode of directly reviewing their proceedings is provided." Id. at 299. The Illinois Supreme Court has

held that a decision by the Court of Claims is subject to review by means of an extraordinary writ filed in the circuit court. See Rossetti Contracting Company, Inc. v. Court of Claims, 109 Ill.2d 71, 79, 485 N.E.2d 332, 334-35, (1985). And yet the Illinois Supreme Court refused to review the Petitioner's Complaint. Similarly, "[c]ircuit courts have original jurisdiction in mandamus proceedings, "People ex rel. Baird v. Lindheimer, 370 Ill. 424, 427, (1939). Writs of mandamus are directed to inferior courts by a superior court. People ex rel Filkin v. Flessner, 48 Ill.2d 54, 56, 268 N.E.2d 376, 378, (1971). Ill. Rev. Stats., ch 110, par. 14-101, et seq.(App. 56-58); and, Illinois Constitution, Art. VI, Sections 4, 6 and 9. As declared in Rossetti Contracting Company Inc. v. Court of

Claims, 109 Ill.2d 72, 78, 485 N.E.2d 332, 334, (1985), the Court of Claims is an inferior court in that it is not a court within the meaning of Article VI of the Illinois Constitution 1970, but instead a fact-finding body. See also People ex rel. Harrod v. Illinois Courts Commission, 69 Ill.2d 445, 461-62, 372 N.E.2d 53, 60, (1977). Furthermore, a decision by the Court of Claims is subject to review by means of an extraordinary writ filed in a circuit court. Rossetti, 109 Ill.2d at 79, 485 N.E. 2d at 334-35. Accordingly, in the instant case, the Circuit Court clearly had jurisdiction to enter declaratory judgment and/or issue either a writ of mandamus or certiorari against the Respondents Illinois Court of Claims, Illinois Department of Public Aid, and its Director in his official capacity.

Moreover, although the issuance of writs of certiorari and mandamus are at the discretion of a circuit court [See People ex rel. Fosse v. Allman, 329 Ill.App. 296, 299 (certiorari), (1946); Orenic v. Illinois State Labor Relations Board, 127 Ill.2d 453, 467, 537 N.E.2d 784, 791, (1989), (mandamus), a court abuses its discretion when it does not exercise said discretion, and such an abuse of discretion calls for a remand. Mizell v. Passo, 192 Ill.App. 3d 435, 441, 548 N.E.2d 783, 787, (1989), cert. denied, 142 Ill.2d 663 (1990). In the instant case, the Circuit Court dismissed Plaintiff's Complaint because it did "not feel [it had] the authority to adjudicate", finding as a matter of law that it did not have jurisdiction (App., 31-34). Since the Circuit Court's refusal to exercise its

discretion was based solely upon its erroneous belief that it lacked jurisdiction, the Circuit Court abused its discretion.

Accordingly, the Appellate Court of Illinois should have reversed the dismissal for want of jurisdiction and directed the Circuit Court to enter a declaratory judgment, and/or cause to be issued a writ of mandamus and/or certiorari compelling the Respondents to perform their constitutional and statutory obligations, or reverse and remand the case for a decision of the merits.

D. THE REFUSAL BY THE ILLINOIS SUPREME COURT TO GRANT REVIEW OF THE DISMISSAL OF PETITIONER'S COMPLAINT WITHOUT PETITIONER HAVING BEEN AFFORDED AN OPPORTUNITY FOR AN EVIDENTIARY HEARING TO SHOW THAT THE REASON GIVEN FOR DISMISSING THE COMPLAINT WAS UNTRUE DEPRIVED PETITIONER OF PROPERTY WITHOUT DUE PROCESS IN VIOLATION OF THE DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

In this case, the Illinois Court of Claims, Circuit Court, Appellate Court and Supreme Court have completely ignored the most fundamental conceptS of due process established by this Court in Armstrong v. Manzo, 380 U.S. 543, 552, (1965); Goldberg v. Kelly, 397 U.S. 254, 270, (1970); Boddie v. Connecticut, 401 U.S. 371, 377, (1971); have acted directly contrary to the principles established by this Court and have deprived Petitioner of rights and property without due process, in violation of the Due Process and Equal Protection Clauses of the Fourteenth Amendment of the Constitution to the United States.

Contrary to the "finding" of the Illinois Appellate Court from which the Illinois Supreme Court refused to grant review, and as is manifest from the pleadings and briefs, Petitioner has never

sought a judgment of monetary damages in the court proceedings. To the contrary, petitioner has at all times only sought a declaration of its and all other vendors' rights, and/or issuance of a writ of mandamus and/or certiorari compelling the Respondents' compliance with clear and unequivocal statutory mandates contained in the language and in conformity with the legislative history of the Prompt Payments Act.

The Illinois Appellate Court held, inter alia (App., 1-26):

> Plaintiff sought to have the circuit court issue a declaratory judgment stating that under the Prompt Payment Act, plaintiff was entitled to an award of interest on the judgment it obtained in the court of claims. However, the court of claims had already decided this issue against the plaintiff. Moreover, the court of claims was the only forum which had jurisdiction to decide such a claim...
>
> * * *

> Clearly, the circuit court had not jurisdiction to make an independent determination of the parties rights' under the Prompt Payment Act.
>
> * * *
>
> It was within the province of the court of claims to determine whether the above statutes were applicable to plaintiff's claim.
>
> * * *
>
> As we discussed above, the circuit court was without authority to make an independent determination of the parties' rights. Because plaintiff failed to demonstrate a clear right to relief, the circuit court did not abuse its discretion by refusing to issue a writ of mandamus to either the members of the court of claims or the director of the Department of Public Aid.

Plaintiff most respectfully submits that a suit for declaratory judgment, that a writ of mandamus and/or certiorari to review and correct "an erroneous construction of a statute is not a suit against the State ...", even if the result is "to compel the director of the state

department and other similar officials to perform their duty to pay plaintiff...". People ex rel. Hilger v. Myers, 114 Ill.App.2d 478 482, (1969), citing People ex rel. Freeman v. Department of Public Welfare, 368 Ill. 505, 507, (1938). See also, Bio-Medical Laboratories v. Trainor 68 Ill.2d 540, (1977).

In this case, the Court of Claims, Circuit Court, and then the Appellate Court and Supreme Court of Illinois have completely ignored: (1) the clear and unequivocal language of the statute, mandating payment of the interest penalty; (2) the clear and conclusive legislative history, evincing the frustration of the Illinois Legislature at the State's continued refusal to abide by its statutory obligations; and (3) the repeated declarations of the Supreme Court of

Illinois, citing this very law as the paradigmatic example of a legislative intent to impose interest liability on the State. More particularly, in City of Springfield v. Allphin, 82 Ill.2d at 571 (1980), the Supreme Court of Illinois specifically stated that "... (W)hen the legislature intends to impose liability on the State for interest it affirmatively declares that the burden will fall on the sovereign. (E.g., Ill. Rev. Stat., ch. 127, par. 132.403, (1976))", specifically referring to the very statute relied upon by Petitioner herein. Yet the very same Illinois Supreme Court refused to review the erroneous Illinois Appellate Court findings, contradicting itself and conflicting with its own findings and as a result deprived Petitioner of rights and property without due process in violation

of the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the Constitution of the United States.

Significantly and determinatively, in In Re Special Education of Steven Walker, supra, 131 Ill.2d 300, 306, the same Supreme Court determinatively stated:

> Also, in City of Springfield v. Allphin, 82 Ill.2d at 578, the court noted that when the legislature intends to impose liability on the State for interest, it will affirmatively declare that the burden will fall on the sovereign. Although the court in Allphin judged that the State was not liable for the interest under a predecessor of section 2-1303 (the previous version of the statute provided for the imposition of the interest against local governmental entities but did not include the language "any other governmental entity"), this court cited section 3 of "An Act to require prompt payments by the State of Illinois for goods or services" (Ill. Rev. Stat., ch. 127, par. 132.403, (1977)) as an example of an act which sufficiently manifested the legislature's intent to waive sovereign immunity. The cited statute provides for 1% interest on bills unpaid by the State. Section 1 of that act provides that "[t]his Act

> applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General Assembly, for goods or services furnished to the State." (Ill. Rev. Stat., ch. 127, par. 132.401, (1977).)

Under such "clear and affirmative statutory language", the Circuit Court, Appellate Court and Supreme Court of Illinois were under a duty to apply the law as legislated, written, construed and previously interpreted by the Supreme Court of Illinois. People ex rel. Harrod v. Illinois Courts Commission, supra, 69 Ill.2d at 472-473, and Rossetti Contracting Co. v. Court of Claims, supra, 109 Ill. 2d at 78-80.

In the State court appeal, this Petitioner sought an interpretation and application of the applicable law by a court of competent jurisdiction. The Illinois Supreme Court should not have

abdicated its judicial responsibility and duty to allow the Court of Claims to read and apply limitations into the statute contrary to its express and unequivocal language, its clear legislative history, and as (twice) interpreted by the Illinois Supreme Court. Accordingly, it was the Illinois Supreme Court and not the Court of Claims that should have made the determination of whether the dismissal of Petitioner's Complaint without a evidentiary hearing denied Petitioner of due process in violation of the Due Process and Equal Protection Clauses of the Fourteen Amendment to the Constitution of the United States, and the determination with respect to entitlement and retroactivity.

E. **THE ILLEGAL FAILURE OF THE ILLINOIS DEPARTMENT OR PUBLIC AID AND ILLINOIS COURT OF CLAIMS TO PAY ANY AND ALL PETITIONER'S BILLS IN VIOLATION OF THE**

PROMPT PAYMENTS ACT FORCING PETITIONER TO SUFFER SUBSTANTIAL INJURY, DAMAGES, AND LOSS, INCLUDING LOSS OF BUSINESS, AND THE DISMISSAL OF PETITIONER'S COMPLAINT WITHOUT EVIDENTIARY HEARING SANCTIONED BY ILLINOIS COURT OF LAST RESORT PRESENT SUBSTANTIAL FEDERAL CONSTITUTIONAL QUESTIONS AND CONFLICT WITH DECISIONS OF THE ILLINOIS SUPREME COURT AND OTHER ILLINOIS APPELLATE COURTS AND WITH ACCEPTED AND RECOGNIZED PRINCIPLES ESTABLISHED BY THIS SUPREME COURT OF THE UNITED STATES.

The failure of Respondent Illinois Department of Public Aid to pay any and all of the bills and invoices from 1969 until August 22, 1988, despite Petitioner's exhaustion of administrative, legal, and equitable efforts violated the provisions the Illinois Prompt PaymentS Act (Ill. Rev. Stat. (1976-1988) ch. 127, par. 132. 401 - 132. 402 - 132. 403 and 132.403-1, (1976-1988) inclusive); and the Illinois Public Aid Code, Ill.Rev.Stat. ch. 23 12-4.25 (F) (App., 53), (1977), which required the payment of all bills submitted within 120

days of the initiation of the type of proceeding which the laws of the State of Illinois required Respondent to conduct in order to withhold payments. Respondent failed to pay Petitioner within 120 days of December 1, 1977, without the statutory authority to do so. Further, the authority contained in 12-4.25 and the limitations placed upon such authority are retroactively applicable to the facts and circumstances contained in this Section 12-4.26. In addition, the Illinois Supreme Court found such failure to pay bills and invoices illegal in Bio-Medical Laboratories Inc., v. Trainor, 68 Ill.2d 540, (1977).

Respondents' illegal failure to pay any and all bills and invoices caused Petitioner to suffer substantial injury, damages and loss, including loss of its

entire business by being forced out of business by reason of illegal failure to pay the sums justly due and owing thereto for services rendered to the State of Illinois, and then the unsuccessful years consumed in the continuing exhaustion of administrative, legal, and equitable efforts to receive payment required before seeking final determination of the Claim in the Court of Claims:

> "Section 790.60 Exhausting of Remedies. As required by Sec. 25 of the Court of Claims Act (Ill.Rev.Stat. 1979, ch. 37, par. 439.24-5), the claimant shall before seeking final determination of his claim before the Court of Claims exhaust all other remedies, whether administrative, legal or equitable."

Because Petitioner did not receive the interest remedy prayed for in its Complaint, a separate and distinct Complaint was filed to obtain the interest penalty, and as shown herein, the Illinois

Court of Claims dismissed the Complaint holding that the invoices were "not approved" without affording a evidentiary hearing, the Circuit Court dismissed Petitioner Complaint for declaratory judgment, etc., for want of jurisdiction without a evidentiary hearing, the Illinois Appellate Court affirmed (App., 1-26), and the Illinois Supreme Court sanctioned such dismissal without evidentiary hearing by refusing to grant review. Petitioner respectfully contends that the Illinois Court of last resort's actions present substantial Federal Constitutional questions and conflict with decisions of the same Supreme Court other Illinois courts, as shown herein, and with accepted and established judicial principles recognized by this Supreme Court of the United States in Armstrong v. Manzo, 380

U.S. 543, 552 (1965); Boddie v. Connecticut 401 U.S. 371, 377 (1971); and Goldberg v. Kelly, 397 U.S. 254, 270 (1970), which this Court should settle to correct the instant injustice and further injustice to the public.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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(2) FILED

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No. OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

Hyde Park Medical Laboratory, Inc., an Illinois Corporation,

Petitioner,

v.

Court of Claims of the State of Illinois, The Illinois Department of Public Aid, and Philip Bradley in the official capacity as Director of the Department of Public Aid,

Respondents.

On Petition for Writ of Certiorari to the Appellate Court of Illinois, First District, Fifth Division

APPENDIX

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January 1995

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Public Aid Code, Ill.Rev.Stats. (1977), ch. 23, Section 23-4.25(F) . . . . . App. 53

Section 2-701 (Declaratory Judgments) of Civil Procedure, Ill.Rev.Stats., ch. 110, par. 2-701 . . . . . App. 54-55

Sections 14-101 through 14-109 (Mandamus) of the Code of Civil Procedure, Ill.Rev.Stats., ch. 100, pars. 14-101 through 14-109, inclusive . . . . . App. 56-58

Excerpts from Complaint For Declaratory Judgment, Mandamus and Other Relief, filed in the Circuit Court of Cook County, Illinois . . . . . App. 59-60

Excerpts from Memorandum Of Law In Support Of Response Objections To Motion To Dismiss, filed with the Circuit Court of Cook County, Illinois . . . . . App. 61-62

Excerpts from Supplemental Memorandum Of Law In Support Of Its Response And Objections To Motion To Dismiss, filed in the Circuit Court of Cook County, Illinois . . . . . App. 63

Excerpts from Motion For Reconsideration, filed in Circuit Court of Cook County, Illinois . . . App. 64-65

Excerpts from Plaintiff-Appellant's Brief, filed in the Appellate Court of Illinois . . . . . App. 66-71

Excerpts from Plaintiff-Appellant's Petition for Rehearing, filed in the Appellate Court of Illinois . . . . . App. 72-80

Excerpts from Petition For Appeal As A Matter Of Right, Or, In The Alternative, For Leave To Appeal, filed in the Supreme Court of Illinois . . . . . App. 81-99

Excerpts from Motion For Reconsideration, presented to the Supreme Court of Illinois . . . . . App. 100-105

FIFTH DIVISION
March 31, 1994

1-91-3886

HYDE PARK MEDICAL LABORATORY, INC an Illinois Corporation,	)	APPEAL FROM THE CIRCUIT COURT OF COOK COUNTY.
Plaintiff-Appellant,	)	
v.	)	
COURT OF CLAIMS OF THE STATE OF ILLINOIS, THE ILLINOIS DEPARTMENT OF PUBLIC AID, and PHILIP BRADLEY, in his official capacity as Director of the Illinois Department of Public Aid,	)	
Defendants-Appellees.	)	THE HONORABLE ARTHUR L. DUNNE, JUDGE PRESIDING.

JUSTICE COUSINS, JR. delivered the opinion of the court:

Plaintiff, Hyde Park Medical Laboratory, appeals from the circuit court's order dismissing its complaint against the court of claims, the Department of Public Aid, and Philip Bradley in his official capacity as director of the Department of Public Aid for lack of jurisdiction. The following issues are raised on appeal: (1) whether the circuit court properly held that it was without jurisdiction to entertain an action for declaratory judgment; (2) whether the circuit court abused its discretion in refusing to issue a writ of mandamus; and (3) whether the circuit court abused its discretion in refusing to grant a writ of certiorari.

We affirm.

BACKGROUND

Plaintiff rendered services to the Department of Public Aid (Department) from December 31, 1969 through May 31, 1971. In July of 1971, the Department notified plaintiff that its unpaid invoices were being held pending investigation. Thereafter, the Department refused to pay the invoices. In 1972, plaintiff instituted an action in the court of claims against the State of Illinois seeking $340,681.

The action was delayed due to removal (and reinstatement) of plaintiff's original counsel, actions brought in the District Court for the Northern District of Illinois, recusal of Court of Claims Commissioners on allegations of bias, failure of defendants to produce documents, and plaintiff's motions for general

continuance status. The case was on general continuance status from March of 1973 until October of 1975, from January of 1977 until June of 1978 and from May of 1979 until January of 1983.

The court of claims conducted a series of hearings in 1976 before a commissioner. No further hearings were held until 1987. On May 11, 1987, the commissioner was instructed to submit his report and on August 22, 1988, the court of claims issued a decision.

In its decision, the court of claims noted that the transcripts of proceedings revealed little evidence, and much argument, bickering and allegations of wrongdoing between the parties. Although the State asserted during the hearings that the claim should have been barred because

of fraud on the part of plaintiff, the court of claims found this allegation to be wholly unsupported by the record. Instead, the court of claims found that the record demonstrated by a preponderance of the evidence that plaintiff was entitled to $340,681.

Plaintiff subsequently filed a motion for rehearing, reconsideration and modification seeking an award of pre-award interest and attorneys fees. The court of claims denied the motion.

On March 28, 1989, plaintiff filed a second complaint in the court of claims which alleged a separate and distinct claim for the interest due and owing pursuant to statute, citing the Prompt Payment Act (Ill. Rev. Stat. ch. 127, par 132.401, et seq. now codified as amended at 30 ILCS

540/1 et seq. (West 1992)), as well as Article I, sections 2, 12, and 15 of the United States Constitution and the Fourteenth Amendment. On December 7, 1990, the court of claims issued an opinion dismissing plaintiff's second complaint. The court of claims held that the Prompt Payment Act did not apply to plaintiff's claims for the following reasons:

> "Ill. Rev. Stat. 1987, ch 127, par. 132.403-1, relied upon by Claimant provides:
>
> 'In any instance where a State official or agency is late in payment of a vendor's bill or invoice properly approved in accordance with this Act *** the State official or agency shall pay the interest penalty ***.' (Emphasis added.)

While Claimant asserts that 'evidence has and will show that all invoices were approved for payment' any such 'approval' of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant indicates an intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not

approved."

Plaintiff filed a motion for rehearing, reconsideration, modification, grant of summary judgment and entry of award prayed for in the complaint, requesting inter alia, an evidentiary hearing with respect to certain findings upon which the court of claims based its December 7, 1990 opinion. The court of claims denied this motion.

On March 13, 1991, plaintiff filed a complaint in the circuit court against the court of claims, the Illinois Department of Public Aid, and Philip Bradley, as Director of the Illinois Department of Public Aid, seeking a declaratory judgment, and the issuance of a writ of mandamus and/or certiorari to compel defendants to fulfill their statutory and/or constitutional

duties to plaintiff under the Prompt Payment Act, as well as the Illinois and United States Constitutions. On May 6, 1991, defendants moved to dismiss, asserting that the action was barred by sovereign immunity; that the court of claims, the proper forum, had denied pre-award interest which decision was res judicata to the instant claim; and that plaintiff had no clear right to compel a decision in plaintiff's favor.

On September 9, 1991, after reviewing the pleadings and hearing argument, the circuit court granted defendants' motion to dismiss. The court held that plaintiff had been granted a full hearing in the court of claims and that the circuit court had no power or authority to review a decision of the court of claims regarding the award of

interest on a judgment in favor of plaintiff. Plaintiff filed a motion for reconsideration which the circuit court denied. This appeal followed.

OPINION

Plaintiff sought to have the circuit court issue a declaratory judgment stating that under the Prompt Payment Act, plaintiff was entitled to an award of interest on the judgment it obtained in the court of claims. However, the court of claims had already decided this issue against plaintiff. Moreover, the court of claims was the only forum which had jurisdiction to decide such a claim. The State Lawsuit Immunity Act provides in relevant part:

"§ 1. Except as provided in the 'Illinois Public Labor Relations Act'

> *** or except as provided in 'AN ACT to create the Court of Claims', *** the State of Illinois shall not be made a defendant or party in any court. (745 ILCS 5/1 (West 1992) formerly, Ill. Rev. Stat. 1991, ch. 127, par. 801.)

The Court of Claims Act provides in pertinent part:

> "§ 8. The court shall have exclusive jurisdiction to hear and determine the following matters:
>
> (a) All claims against the state founded upon any law of the State of Illinois *** other than claims arising under the Workers' Compensation Act or

> the Workers' Occupational Diseases Act, or claims for expenses in civil litigation." 705 ILCS 505/7 (West 1992) formerly, Ill. Rev. Stat. 1991, ch. 37, par. 439.8.

The law is clear. "All claims against the state founded upon any law of the State of Illinois" are within the exclusive jurisdiction of the court of claims. (705 ILCS 505/7 (West 1992); see Ellis v. Board of Governors (1984), 102 Ill. 2d 387.) Plaintiff is seeking a monetary award from the Department of Public Aid under the Prompt Payment Act. The Department of Public Aid is an arm of the State and the Prompt Payment Act is a law of the State of Illinois. Clearly, the circuit court had no jurisdiction to make an independent

determination of the parties' rights under the Prompt Payment Act.

Plaintiff next contends that its claim fits within an exception to the doctrine of sovereign immunity. Plaintiff points out that sovereign immunity affords no protection when it is alleged that the State's agents acted in violation of statutory or constitutional law or in excess of their authority. (See Healy v. Vaupel (1990), 133 Ill. 2d 295, 308.) Plaintiff sought to have the circuit court issue a writ of mandamus to compel members of the court of claims and the director of the Department of Public Aid to "abide by their statutory duties." Plaintiff suggests that it is the court of claims' duty to order the director to pay plaintiff interest and it is the director's duty to

pay the interest.

Mandamus is an extraordinary remedy which is only appropriate where the party seeking the writ demonstrates a clear legal right to the requested relief. (See League of Women Voters of Peoria v. County of Peoria (1987), 121 Ill. 2d 236, 243; Winston Plaza Currency Exchange, Inc. v. The Department of Financial Institutions (1991), 211 Ill. App. 3d 1062, 1068.) Mandamus is used to direct a public official or body to perform a ministerial duty, one which does not involve the exercise of judgment or discretion. (Winston, 211 Ill. App. 3d at 1068.) It cannot be used to direct a public official or body to reach a particular decision or to exercise its discretion in a particular manner, ever if the judgment or discretion

has been erroneously exercised. City of Highwood v. Obenberger (1992), 238 Ill. App. 3d 1066; Winston, 211 Ill. App. 3d at 1068.

In the instant case, plaintiff has failed to show a clear right to relief. In its brief, plaintiff contends that it "is entitled to interest and/or interest penalty pursuant to and in accordance with one or more of the following statutory provisions:

(1) Ill. Rev. Stat. 1988, ch. 127, pars. 132.401 through 132.403-1; (2) Ill. Rev. Stat. 1976, ch. 127, pars. 132.401 through 132.4031; and (3) Ill. Rev. Stat. 1977, ch. 23, par. 12-4.25(F)." Each of these statutes was enacted prior to the accrual of plaintiff's cause of action and the filing of its claim; plaintiff cites no

authority rendering these statutes retroactive. It was within the province of the court of claims to determine whether the above statutes were applicable to plaintiff's claim. The court of claims determined that even if plaintiff's invoices were subject to the legislation, plaintiff would not be entitled to interest since the invoices were not properly approved at the time of the passage of the legislation. As we discussed above, the circuit court was without authority to make an independent determination of the parties' rights. Because plaintiff failed to demonstrate a clear right to relief, the circuit court did not abuse its discretion by refusing to issue a writ of mandamus to either the members of the court of claims or the director of the Department of Public

Aid.

Finally, plaintiff sought to have the circuit court issue a writ of certiorari to review the court of claims' decision and/or order the court of claims to hold an additional evidentiary hearing. A common law writ of certiorari may be available to review the actions of an inferior tribunal when no other mode of appeal or review is provided. (Rossetti Contracting Co. v. Court of Claims (1985), 109 Ill. 2d 72, 79.) However, there is no absolute right to review by certiorari; issuance of a writ of certiorari lies within the sound discretion of the court. (Stratton v. Wenona Community Unit District (1990), 133 Ill. 2d 413, 428.) Plaintiff relies on Rossetti, 109 Ill. 2d 72, to support his position.

In Rossetti, a decision expressly limited to its facts, our supreme court held that a writ of certiorari was the appropriate means to review a decision by the court of claims. (Rossetti, 109 Ill. 2d at 79.) Rossetti was a subcontractor to a general contractor who had entered into an agreement with the Illinois Department of Transportation. A dispute arose, and the general contractor brought suit in the court of claims for money due under the contract, including money owed to the subcontractor. As an affirmative defense, the Department of Transportation asserted that the general contractor had engaged in fraud against the State. The subcontractor then sought to intervene in the suit, arguing that there was no evidence of fraud on his part. The court of claims denied

the subcontractor's petition without stating reasons. Subsequently, the court of claims granted summary judgment in favor of the Department of Transportation and dismissed the general contractor's claim in its in entirety.

The subcontractor then sought relief in the circuit court by filing a petition for writ of certiorari. The circuit court stated that a manifest injustice had been worked upon the subcontractor, and that he should have a right to appear in a forum and present his claim against the State of Illinois. However, the circuit court concluded that it was without jurisdiction over the matter and denied the claim on that basis. Rossetti, 109 Ill. 2d at 76.

The supreme court concluded that a writ of certiorari was the appropriate

means to review the court of claims' decision. The supreme court observed that the subcontractor was not presently seeking money damages against the State, but only the right to be heard on his claim. The supreme court noted that it had the authority and the responsibility, as the final arbiter of the Constitution, to determine whether the court of claims had acted in a manner which unconstitutionally deprived a party of its right to due process. The supreme court then concluded that the subcontractor had been denied his due process rights and remanded the case to the court of claims. Rossetti, 109 Ill. 2d at 78-79.

In holding that certiorari was appropriate in Rossetti, the supreme court expressly limited its decision to the

narrow facts before it:

> "In deciding that certiorari was appropriate under the rare set of circumstances in the instant case, we do not now hold that certiorari would be available to review the correctness of any decision of the court of claims based on the merits of an appeal." Rossetti, 109 Ill. 2d at 80.

Unlike the subcontractor in Rossetti, plaintiff was not deprived of the opportunity to be heard. We decline to extend the scope of review permitted in Rossetti to the merits of decisions from the court of claims. In enacting the Court of Claims Act, the legislature created an exception to the doctrine of sovereign immunity by allowing parties to bring

monetary claims against the State in the court of claims. (See 705 ILCS 505/1 et seq. (West 1992).) It is within the legislature's prerogative to determine the condition upon which suits against the State may be brought. The legislature has determined that the court of claims has exclusive subject matter jurisdiction over monetary claims against the State. Accordingly, the circuit court was without authority to review the merits of the court of claims decision.

Plaintiff further alleges that it was denied due process when the court of claims rejected its request for an evidentiary hearing regarding the court of claims' finding that plaintiff's invoices were not properly approved. Plaintiff asserts that under Rossetti, it is entitled to an

additional evidentiary hearing. Plaintiff's reliance on Rossetti is misplaced.

In Rossetti, the plaintiff was never afforded any opportunity to be heard; Rossetti was never permitted to become a party to the suit which deprived him of his rights under a contract with the State. Here, plaintiff was afforded a hearing on the issue of whether interest should be awarded on plaintiff's judgment. The court of claims heard arguments and allowed the parties to file supplemental briefs. The court then determined that,

> "While Claimant asserts that 'evidence has and will show that all invoices were approved for payment,' any such 'approval' of invoices for services rendered in 1969-1971 had

been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant indicates an intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not approved."

Plaintiff contends that it should have been granted an additional hearing specifically on the issue of whether its

invoices were "approved." Plaintiff argues that it should have had the opportunity to prove that the invoices were approved. We find no due process violation in the court of claims refusal to grant an additional hearing. It is clear from the court of claims' opinion that it considered the very issue on which plaintiff seeks to be heard; the court determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise. Accordingly, the circuit court did not abuse its discretion in failing to order the court of claims to provide an additional hearing.

For the foregoing reasons, the judgment of the circuit court is affirmed.

Affirmed.

MURRAY, P.J., and McNULTY, J., concur.

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

HYDE PARK MEDICAL LABORATORY, INC., an Illinois Corporation,	)	
Plaintiff-Appellant,	)	
v.	)	No. 1-91-3886
COURT OF CLAIMS OF THE STATE OF ILLINOIS, THE ILLINOIS DEPARTMENT OF PUBLIC AID, and PHILIP BRADLEY in the official capacity as Director of the Department of Public Aid.	)	
Defendants-Appellees.	)	

ORDER

Plaintiff-Appellant's Petition for Rehearing is denied.

Entered June 14, 1994

ILLINOIS SUPREME COURT

JULEANN HORNYAK, CLERK

77554 **SUPREME COURT BUILDING**

SPRINGFIELD, ILL. 62706

(217) 782-2035

October 6, 1994

Mr. Lawrence Jay Weiner
Scariano, Kula, Ellch & Himes, Chtd.
180 North Stetson, S#3100
Chicago, IL 60601-6714

No. 77554 - Hyde Park Medical Laboratory, Inc., etc., petitioner, v. Court of Claims of the State of Illinois et al., etc., respondents. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal as a matter of right or

leave to appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on October 28, 1994.

IN THE
SUPREME COURT OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, INC., an Illinois Corporation,	)	
Plaintiff-Appellant,	)	
v.	)	No. 77554
COURT OF CLAIMS OF THE STATE OF ILLINOIS, THE ILLINOIS DEPARTMENT OF PUBLIC AID, and PHILIP BRADLEY in his official capacity as Director of the Department of Public Aid,	)	
Defendants-Appellees.	)	

ORDER

THIS CAUSE COMING ON TO BE HEARD UPON the Petitioner's Motion of the Petitioner and Plaintiff-Appellant Hyde Park Medical Laboratory, Inc. for Leave to File Motion for Reconsideration, and the Court being

fully advised in the premises.

IT IS HEREBY ORDERED that the Motion of the Petitioner and Plaintiff-Appellant Hyde Park Medical Laboratory, Inc. for Leave to File its Motion for Reconsideration be and is denied.

Filed: November 18, 1994

IN THE CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

Hyde Park Medical Lab. Inc.	)	
Plaintiff,	)	
v.	)	No. 91 CH 2302
Court of Claims of the State of Illinois, The Illinois Dept. of Public Aid and Philip Bradley,	)	
Defendants.	)	Judge Dunne

ORDER

This matter coming before the Court for hearing on Defendants' Motion to Dismiss, the matter being fully briefed, and the Court being duly advised in the premises,

It is hereby Ordered that Defendants' Motion is granted. This cause is dismissed for want of jurisdiction for the reasons stated in open court. The Court finds that

there is no just reason for delaying enforcement or appeal of this matter.

Entered September 9, 1991

IN THE CIRCUIT COURT OF

COOK COUNTY, ILLINOIS

Hyde Park Medical Lab. Inc.	)	
Plaintiff,	)	
v.	)	No. 91 CH 2302
Court of Claims of the State of Illinois, The Illinois Dept. of Public Aid, et al.,	)	
Defendants.	)	Judge Dunne

ORDER

This matter coming before the Court on Plaintiff's Motion for Reconsideration, all parties appearing by counsel and the Court being duly advised in the premises;

It is Hereby Ordered that Plaintiff's Motion for Reconsideration is denied. There is no just reason for delay (sic) enforcement or appeal of this Order.

Entered November 12, 1991

COURT OF CLAIMS
STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, an Illinois Corporation	)	
Claimant,	)	
vs.	)	No. 6779
STATE OF ILLINOIS,	)	
Respondent.	)	

OPINION

Lawrence Jay Weiner, Chicago, for Claimant,

Neil F. Hartigan, Attorney General, Springfield, by Robert Sklamberg, Assistant Attorney General, Chicago, for Respondent.

RAUCCI, JUDGE, DELIVERED THE OPINION OF THE COURT:

This case is brought by Claimant seeking to recover $340,681.00 for medical laboratory services rendered to the

Department of Public Aid from December 31, 1969 through May 31, 1971. The Respondent urges that no sums are due.

To understand this case, and the interminable delays in its disposition, the following discussion of the facts is necessary.

In July of 1971, the Department of Public Aid notified Claimant that its unpaid invoices were being held pending investigation. Thereafter, the Department refused to pay them and this action was instituted for $307,960.00 By amended Complaint, the amount sought is now $340,681.00.

This action has been delayed in proceeding because of the Claimant's removal (and reinstatement) of his original counsel, actions brought in the District Court for the Northern District of

Illinois, recusal of our Commissioners on allegations of Claimant of bias, failure of Respondent to produce documents, and Claimant's motions for general continuance status pursuant to our Rules. This case was on general continuance status from March of 1973 until October of 1975, from January of 1977 until June of 1978 and from May of 1979 until January of 1983.

A series of hearings was conducted in 1976 before one of our Commissioners. It should be noted that none of the present Judges of this Court were such at that time. No further hearings were held until 1987. On May 11, 1987, we entered an Order, on motion of claimant, barring the Respondent from offering further evidence and instructed our Commissioner (not the one who conducted the 1976 hearings) to submit his report. He has done so, and we

have extensively examined the record in our possession, and herewith issue or Opinion.

The transcripts of proceedings reveal little evidence, and much argument, bickering and allegations or wrongdoing between the Claimant, his attorney and the Assistant Attorney General (now deceased) who participated in the 1976 hearings.

It was asserted by Respondent during the hearings that the claim should be barred because of fraud on the part of the Claimant. Our examination of the record fails to show a scintilla of evidence that supports that allegation.

The record in support of Claimant's claim consists of the verified pleadings, testimony of its sole shareholder that the services were rendered to patients eligible for medical assistance, documents and the offer of "boxes" of invoices and records

admittedly in the possession of the Respondent and, since the prior hearings, "lost" either by the Office of the Attorney General or the Department of Public Aid more than ten years ago. Additionally, the Claimant has submitted the statement of his counsel, under oath, that "The Bill of Particulars (previously filed) constituted a true and accurate summary of the aforesaid records and was conformed and verified prior to submission to the Commissioner." See Supplemental Motion for Immediate Granting of An Award, page 2, filed June 23, 1988.

Respondent does not deny that it received records prior to the 1976 hearings, and simply maintains they are "lost". In fact, Respondent has, in correspondence filed with us by Claimant, acknowledged that it did receive invoices

and billings for approximately $165,000.00.

The Bill of Particulars, filed December 10, 11986, is some two inches thick, and describes by date, patient and amount of charge the more voluminous records and invoices submitted ten (10) years earlier to the Respondent and lost by Respondent. The Bill of Particulars specifies some 6,376 charges.

Based on the entire record, and we note that Respondent has not refuted Claimant's evidence, we find that the Claimant has established, by a preponderance of the evidence, that it is entitled to $340,681.00

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Claimant is awarded $340,681.00 in full and complete satisfaction of this claim.

Filed: August 22, 1988

IN THE COURT OF CLAIMS - STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY,	)	
Claimant,	)	
v.	)	No. 6779
STATE OF ILLINOIS,	)	
Respondent,	)	

ORDER

This cause coming on to be heard on claimant's Motion for Rehearing, Reconsideration, and Modification, and respondent's Reply thereto; due notice having been given the parties hereto, and the Court being fully advised in the premises:

We note first that claimant's motion is a request for an award of pre-award interest and attorneys fees in this case.

This Court has consistently held that interest is not recoverable against the State in the absence of a statute specifically and clearly naming the State of Illinois for inclusion in that statute. I & D Pharmacy, Inc. v. State, 37 C.C.R. 37, 41-43. Note that I & D Pharmacy involved the same statute, Ill.Rev.Stat., ch. 110, par. 2-1303, that claimant herein cites as the basis for its claim to interest. It should also be noted that this statute applies to interest on judgments, or "post-judgment" interest, and not pre-judgment interest, as is sought herein. See also, Moline Heating & Construction Company v. State 35 C.C.R. 150, which deal specifically with pre-judgment interest (claim denied). Id. at 160.

Similarly, this Court has long held

that the State of Illinois is not liable for payment of attorneys fees in the absence of a statute specifically and clearly subjecting it to such liability. Cayman Associates, Ltd. v. State, 33 C.C.R. 301. Claimant relies on Ill.Rev.Stat., ch. 110, par. 2-611, which subjects the State to its provisions, for this claim for attorneys fees. However, this statute is inapposite as it concerns the application of sanctions for the certification of pleadings in bad faith. That subject is wholly irrelevant to the case at hand, and it is inappropriate for claimant to seek the relief requested under that statute.

For the foregoing reasons, we hold that claimant's motion for pre-judgment interest and attorneys fees should be denied.

IT IS THEREFORE ORDERED that claimant's Motion for Rehearing, Reconsideration, and Modification be, and the same is, hereby denied.

Filed: November 7, 1988

IN THE COURT OF CLAIMS FOR THE STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, INC., an Illinois Corporation,	)	
Claimant,	)	
vs.	)	No. 89-CC-3041
STATE OF ILLINOIS and THE ILLINOIS DEPARTMENT OF PUBLIC AID,	)	
Respondent.	)	

OPINION

R. Steven Polachek and Lawrence Jay Weiner, Chicago, for the Claimant;

Neil F. Hartigan, Attorney General, Springfield, by Robert J. Sklamberg, Assistant Attorney General, Chicago, for Respondent.

RAUCCI, JUDGE, delivered the Opinion of the Court.

Pending before the Court is the

Claimant's Motion for Summary Judgment and the Respondent and the Respondent's Motion to Dismiss.

Respondent has moved to dismiss on the grounds of res judicata. A brief discussion of the origination of this action is necessary to understand the issues.

In 1972 Claimant filed an action in this Court seeking payment for services rendered to the Department of Public Aid. Other actions ere filed in federal court, and the matter in this Court was continued generally. After disposal of the other actions, the matter was concluded in this Court on August 22, 1988 with an award to Claimant on $340,681. Claimant filed a Motion for Rehearing, Reconsideration, and Modification seeking "pre-award interest and attorneys' fees". On November 7, 1988

that motion was denied. On March 28, 1989, Claimant filed the instant action. Claimant has filed a Motion for Summary Judgment, and Respondent has filed a Motion to Dismiss. We heard oral arguments, and allowed the parties to file supplemental briefs.

Because of the length of time of contention between the parties, and the nature of the issues before us, we decline to rule on the Respondent's contention that this action is barred by res judicata. Instead, we construe the motions, memoranda and exhibits of the parties as cross-motions for Summary Judgment and proceed to rule thereon.

Ill.Rec.Stat. 1987, ch. 127, par 132.403-1, relied upon by Claimant, provides:

> In any instance where a State official or agency is late in payment of a

> vendor's bill or invoice properly approved in accordance with this Act . .. the State official or agency shall pay the interest penalty. . . (emphasis supplied).

While Claimant asserts that "the evidence has and will show that all invoices were approved for payment" any such "approval" of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant, indicates an intent to provide interest on invoices that were not "approved" at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices ere subject to the legislation, it would not be entitled to interest since they were not approved.

Claimant has cited In re Special Education of Steven Walker, 131 Ill. 2d 300, 546 N.E. 2d 520, 1989) for the proposition that the Prompt Payment Act "constituted an example of an act which sufficiently manifested the Legislature's intent to waive sovereign immunity and required payment of interest on bills unpaid by the State". We do not find sovereign immunity to be an issue in this case. Rather, we find the issue to be whether Claimant's 1969-1971 invoices qualify for interest under the facts of this case. For the reasons set forth, we decide the issue against Claimant and for Respondent.

It is therefore ORDERED, ADJUDGED and DECREED that this claim is DISMISSED, and forever barred.

Filed: November 7, 1988

COURT OF CLAIMS
STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, INC. an Illinois Corporation,	)	
Claimant	)	
vs.	)	No. 89-CC-3041
STATE OF ILLINOIS,	)	
Respondent.	)	

ORDER

THIS CAUSE coming on to be heard on Claimant's Petition for Rehearing, Reconsideration, Grant of Summary Judgment and Entry of Award Prayed for in Complaint, and the Court being fully advised in the premises, it is

ORDERED that Claimant's Petition for Rehearing, Reconsideration, Grant of Summary Judgment and Entry of Award Prayed for in Complaint is hereby DENIED.

Filed: June 12, 1991

COURT OF CLAIMS
STATE OF ILLINOIS

HYDE PARK MEDICAL LABORATORY, INC. an Illinois Corporation,	)	
Claimant	)	
vs.	)	No. 89 CC 3041
STATE OF ILLINOIS, and THE DEPARTMENT OF PUBLIC AID,	)	
Respondent.	)	

ORDER

THIS CAUSE coming on to be heard on Claimant's Request for Evidentiary Hearing, the Court being fully advised in the premises.

FINDS that on June 12, 1991, we denied Claimant's Petition for Rehearing, Reconsideration, Grant of Summary Judgment and Entry of Award Prayed for in Complaint. It appears that in transmitting a copy of that Order to Claimant, the Clerk

erroneously sent a form letter indicating further review was available. No further review, or proceedings, are available. Our Order of June 12, 1991 effectively terminated all proceedings in the Court of Claims.

ORDERED, that the Claimant's Request for Evidentiary Hearing is DENIED.

Filed: September 6, 1991

PERTINENT ADDITIONAL STATUTORY PROVISIONS

PUBLIC AID CODE
Illinois revised Statutes 1977, ch. 23,
§ 12-4.25 (F)

* * *

(F) The Illinois Department may withhold payments to any vendor during the pendency of any proceeding under this Section except that if a final administrative decision has not been issued within 120 days of the initiation of such proceedings, unless delay has been caused by the vendor, payments can no longer be withheld, provided, however, that the 120 day limit may be extended if said extension is mutually agreed to by the Illinois department and the vendor. The Illinois Department shall state by rule with as much specificity as practicable the conditions under which payments will not be withheld during the pendency of any proceeding under this Section. Payment may be denied for bills submitted with service dates occurring during the pendency of a proceeding where the final administrative decision is to terminate eligibility to participate in the medical assistance program. The Illinois Department shall state by rule with as much specificity as practicable the conditions under which payments will not be denied for such bills.

Section 2-701 (declaratory Judgments) of the Code of Civil Procedure, Ill. Rev. Stats., ch. 110, par. 2-701

Section 2-701. Declaratory judgments. (a) No action or proceeding is open to objection on the ground that a merely declaratory judgment or order is sought thereby. The court may, in cases of actual controversy, make binding declarations of rights, having the force of final judgments, whether or not any consequential relief is or could be claimed, including the determination, at the instance of anyone interested in the controversy, of the construction of any statute, municipal ordinance, or other governmental regulation, or of any deed, will, contract or other written instrument, and a declaration of the rights of the parties interested. The foregoing enumeration does not exclude other cases of actual controversy. The court shall refuse to enter a declaratory judgment or order, if it appears that the judgment or order, would not terminate the controversy or some part thereof, giving rise to the proceeding. In no event shall the court entertain any action or proceeding for a declaratory judgment or order involving any political question where the defendant is a State officer whose election is provided for by the Constitution; however, nothing herein shall prevent the court from entertaining any such action or proceeding for a declaratory judgment or order if such question also involves a constitutional convention or the construction of a statute involving a constitutional convention.

(b) Declarations of rights, as herein provided for, may be obtained by means of a pleading seeking that relief alone, or as incident to or part of a complaint, counterclaim or other pleading seeking the relief as well, and if a declaration of rights is the only relief asked, the case may be set for early hearing as in the case of a motion.

(c) If further relief based upon a declaration of right becomes necessary or proper after the declaration has been made, application may be made by petition to any court having jurisdiction for an order directed to any party or parties whose rights have been determined by the declaration to show cause why the further relief should not be granted forthwith, upon reasonable notice prescribed by the court in its order.

(d) If a proceeding under this Section involves the determination of issues of fact triable by a jury, they shall be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

(e) Unless the parties agree by stipulation as to the allowance thereof, costs in proceedings authorized by this Section shall be allowed in accordance with rules. In the absence of rules the practice in other civil actions shall be followed if applicable and if not applicable, the costs may be taxed as to the court seems just.

Section 14-101 through 14-109 (Mandamus) of the Code of Civil Procedure, Ill. Rev. Stats., ch. 110, pars. 14-101 through 14-109, inclusive:

Section 14-101. Action commenced by plaintiff. In all proceedings commenced under Article XIV of this Act the name of the person seeking the relief afforded by this Article shall be set out as plaintiff without the use of the phrase "People ex cel." or "People on the relation of".

Section 14-102. Summons to issue. Upon the filing of a complaint for mandamus the clerk of the court shall issue a summons, in like form, as near as may be as summons in other civil cases. The summons shall be made returnable within a time designated by the plaintiff not less than 5 nor more than 30 days after the service of the summons.

Section 14-103. Defendant to plead. Every defendant who is served with summons shall answer or otherwise plead on or before the return day of the summons, unless the time for doing so is extended by the court. If the defendant defaults, judgment by default may be entered by the court. No matters not germane to the distinctive purpose of the proceeding shall be introduced by joinder, counterclaim or otherwise.

Section 14-104. Reply by plaintiff. The plaintiff may reply or otherwise plead to the answer, within 5 days after the last day allowed for the filing of the answer, unless the time for

doing so is extended and further pleadings may be had as in other civil cases.

Section 14-106. False return. If damages are recovered against the defendant, the defendant shall not be liable to be sued in any other action or proceeding for making a false return.

Section 14-107. Successor in office. The death, resignation or removal from office, by lapse of time or otherwise, of any defendant, shall not have the effect to abate the proceeding, and upon a proper showing, the officer's successor may be made a party thereto, and any relief may be directed against the successor officer.

Section 14-108. Other remedy - Amendments. The proceedings for mandamus shall not be dismissed nor the relief denied because the plaintiff may have another judicial remedy, even where such other remedy will afford proper and sufficient relief; and amendments may be allowed as in other civil cases.

Section 14-109. Seeking wrong remedy not fatal. Where relief is sought under Article XIV of this Act and the court determines, on motion directed to the pleadings, or on motion for summary judgment or upon trial, that the plaintiff has pleaded or established facts which entitle the plaintiff to relief but that the plaintiff has sought the wrong remedy, the court shall permit the pleadings to be amended, on just the reasonable terms, and the court shall grant the relief to which the plaintiff is entitled on the amended

pleadings or upon the evidence. In considering whether a proposed amendment is just and reasonable, the court shall consider the right of the defendant to assert additional defenses, to demand a trial by jury, to plead a counterclaim or third party complaint, and to order the plaintiff to take additional steps which were not required under the pleadings as previously filed.

EXCERPTS FROM THE
COMPLAINT FOR DECLARATORY JUDGMENT,
MANDAMUS AND OTHER RELIEF,
FILED IN THE CIRCUIT COURT OF
COOK COUNTY, ILLINOIS

* * *

5. Plaintiff is and was entitled to have received pre-award interest for the reasons set forth in Complaint attached hereto as Exhibit "C", incorporated herein by this reference, including pursuant to and in accordance with one or more of the following statutory and/or constitutional provisions: . . .

* * *

(e) In addition and/or alternatively, Claimant is entitled to interest and/or interest penalty on the sums found justly due and owing thereto as a remedy and/or damages for the denial of the equal protection of the laws and/or the taking of Claimant's property (by unlawfully depriving Claimant of sums justly due and owing thereto) without due process of law in violation of Article I, Sections 2, 12 and/or 15 of the Constitution of the State of Illinois and the Fourteenth Amendment to the Constitution of the United States.

6. The refusal, failure and/or neglect of the Defendants to award and/or pay Plaintiff the pre-award interest to which it was statutorily and/or constitutionally entitled, constituted a failure to perform the statutory and/or constitutional duties, responsibilities and/or obligations thereof.

* * *

EXCERPTS FROM THE MEMORANDUM OF LAW IN SUPPORT OF RESPONSE OBJECTIONS TO MOTION TO DISMISS, FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * *

7. Plaintiff is and was entitled to have received pre-award interest for the reasons set forth in the Complaint filed before the Court of Claims, No. 89 CC 3040, attached hereto as Exhibit C and incorporated herein by this reference, including pursuant to and in accordance with one or more of the following statutory and/or constitutional provisions: . . .

* * *

(e) In addition and/or alternatively, Plaintiff is entitled to interest and/or penalty on the sums found justly due and owing thereto as a remedy and/or damages for the denial of the equal protection of the laws and/or the taking of Plaintiff's property (by unlawfully depriving Plaintiff of sums justly due and owing thereto) without due process of law in violation of Article I, Sections 2, 12 and/or 15 of the Constitution of the

State of Illinois and the Fourteenth Amendment to the Constitution of the United States.

8. The refusal, failure and/or neglect of the Defendants to award and/or pay Plaintiff the pre-award interest to which it was statutorily and/or constitutionally entitled, constituted a failure to perform the statutory and/or constitutional duties, responsibilities and/or obligations thereof.

* * *

EXCERPTS FROM THE SUPPLEMENTAL MEMORANDUM OF LAW IN SUPPORT OF ITS RESPONSE AND OBJECTIONS TO MOTION TO DISMISS, FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * *

19. The aforesaid actions of the Defendant Director of Public Aid, the failure to effect payment to Plaintiff and refusal to afford a hearing with respect to aforesaid failure and refusal, constitute an unconstitutional usurpation of the powers vested in the judicial and legislative branch of government of the State of Illinois and a denial of due process and equal protection of laws under the State of Illinois Constitution and the Constitution of the United States.

* * *

EXCERPTS FROM THE MOTION FOR RECONSIDERATION, FILED IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

* * *

If Plaintiff is not afforded an evidentiary hearing (if deemed necessary), it is respectfully submitted that Plaintiff will continue to suffer the deprivation of its rights and property without due process, in violation of its rights under the Constitutions of the State of Illinois and the United States, and be deprived of a remedy for an obvious and determined wrong.

The concern of Plaintiff is that at the hearing on Defendants' Motion to Dismiss, the Court indicated that Plaintiff had already received a "hearing," which could by inference imply that there was an evidentiary hearing as to whether Plaintiff's bills and invoices had been "approved" under the meaning of the Act. However, although Plaintiff did receive an evidentiary hearing on its claim and proved entitlement to $340,681.00 in unpaid bills and invoices, Plaintiff never was afforded a hearing <u>of any type</u> affording the opportunity to prove that the <u>purported</u> "factual;" basis for the Court of Claims' refusal to award inters, i.e., that Plaintiff's bills and invoices were not "approved," was: 1) not true; 2) not supported by the

record; and/or 3) capable of being disproved if afforded the opportunity at an evidentiary hearing. The Court of Claims refused to afford Plaintiff an evidentiary hearing. Plaintiff respectfully submits that this Court should either rule in Plaintiff's favor based upon the facts of record, or provide Plaintiff with an evidentiary hearing as a matter of fairness and equity.

* * *

EXCERPTS FROM PLAINTIFF-APPELLANT'S BRIEF, FILED IN THE APPELLATE COURT OF ILLINOIS

* * *

PLAINTIFF IS ENTITLED TO A DECLARATORY JUDGMENT, WRIT OF MANDAMUS AND/OR WRIT OF CERTIORARI

The very purpose of the prompt payments legislation from inception thereof in 1975 was to mandate the recalcitrant officers of the State of Illinois to fulfill their statutory obligation to pay justly due and owing bill. The Director of the Illinois Department of Public Aid was found (after a full evidentiary trial/hearing) to have wrongfully failed to pay the Plaintiff the sum of $340,681.00, which was the exact amount prayed for thereby. The Director of the Illinois Department of Public Aid should have promptly paid ab initio Plaintiff the sums found justly due and owing. Having violated his official and statutory responsibilities, the amounts wrongfully withheld from Plaintiff were subject to interest and/or interest penalties under the original prompt payments act adopted in 1975, to and including to the present act, effective January 1, 1988, by reason and as a result of the frustration of the General Assembly with the failure by officials of the State to promptly pay bills under the previous . . . Plaintiff is and was entitled to interest and/or interest penalty

pursuant to and in accordance with one or more of the following statutory and/or constitutional provisions:

* * *

4. In Addition and/or alternatively, Plaintiff is entitled to interest and/or interest penalty on the sums found justly due and owing thereto as a remedy and/or damages for . . . taking of Plaintiff's property (by unlawfully depriving Plaintiff of sums justly due and owing thereto) without due process of law in violation of Article I, Sections 2, 12 and/or 15 of the Constitution of the State of Illinois and the Fourteen Amendment to the Constitution of the United States.

* * *

THE CIRCUIT COURT ERRED IN DENYING PLAINTIFF AN EVIDENTIARY HEARING AND/OR REFUSING TO REMAND THE CASE TO THE COURT OF CLAIMS FOR AN EVIDENTIARY HEARING.

The purported reason proffered by the Defendant Court of Claims for denying the claimed interest was that the Plaintiff's invoices and bills were not "properly approved", stating (Opinion, December 7, 1990, Complaint Ex. "D"):

> "Ill. Rev. Stat. 1987, ch. 127, par. 132.403-1, relied upon by claimant, provides:
>
> In any instance where a State official or agency is late in

> payment of a vendor's bill or invoice properly approved in accordance with this Act... the State official or agency shall pay the interest penalty.. (emphasis supplied).

While Claimant asserts that 'the evidence has and will show that all invoices were approved for payment' any such 'approval' of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant, indicates an intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not approved."

First, Plaintiff respectfully notes the manifest incongruity of the aforesaid opinion in that a wrongful refusal (much less a wrongful failure as in the instant case) to pay bills and invoices found justly due and owing will, under the Court of Claims' "reasoning", result in no interest being received by the aggrieved vendor. Apparently, it is only where the state officials (rightly or wrongly) affirmatively acknowledge the

indebtedness will interest be awarded. Accordingly, the consequence of a wrongful denial or failure to pay is the forfeiture of the statutorily mandated relief. This makes no sense.

Second, as is noted in the Court of Claims' Opinion, Plaintiff sought an evidentiary hearing whereat proof would be adduced that its bills and invoices were properly approved, and submitted evidence in support of its request (See Request for Evidentiary Hearing (R C187), and, including the affidavit of James A. Wright Documents attached thereto). Notwithstanding, the aforesaid request and evidence of approval, the Court of Claims refused to grant Plaintiff a hearing on the issue of whether the bills and invoices were "approved" within the meaning of the Act (See Order, September 6, 1991; R C201). Therefore, although Plaintiff did receive an evidentiary hearing on its claim and proved entitlement to $340,681.00 in unpaid bills and invoices, Plaintiff never was afforded a hearing of any type affording the opportunity to prove that the purported "factual" basis for the Court of Claims' refusal to award interest, i.e., that Plaintiff's bills and invoices were not "approved," was: 1) not true; 20 not supported by the record; and/or 3) capable of being disproved if afforded the opportunity at an evidentiary hearing. The Court of Claims refused to afford Plaintiff an evidentiary hearing. Plaintiff

respectfully submits that this Court should either reverse the orders of the Circuit Court and Court of Claims in Plaintiff's favor as a matter of law by reason that there will never be any "approval" of wrongfully denied bills, and/or based upon the facts of record, or reverse and remand the case with directions to the Circuit Court to provide Plaintiff with an evidentiary hearing before it or the Court of Claims as a matter of fairness and equity.

In this respect, this case in analogous to Rossetti Contracting Company, Inc. v. The Court of Claims 1985, 109 Ill.2d 72, wherein there was no hearing afforded the claimant (albeit on the substance of its claim). Therefore, assuming arguendo that the award upon the invoices and bills per se does not result in entitlement, this Court should either rule in Plaintiff's favor based upon the unrebutted evidence of approval, or grant Plaintiff a hearing whereat evidence of "approval" will be adduced, thereby establishing entitlement to interest and/or interest penalties under the Prompt Payment Act.

If Plaintiff is not afforded an evidentiary hearing (if deemed necessary), it is respectfully submitted that Plaintiff will continue to suffer the deprivation of its rights and property without due process, in violation of its rights

under the Constitutions of the State of Illinois and the United States, and be deprived of a remedy for an obvious and determined wrong.

In Rossetti, the Supreme Court held that the Court of Claims was not a court within the meaning of Article VI of the Illinois Constitution of 1970 but a fact-finding body, and therefore it was an unconstitutional deprivation or due process for the Court of Claims to interpret a section of the Court of Claims Act to be applicable to the Plaintiff without giving the Plaintiff the "opportunity to be heard." 109 Ill.2d at 78, 485 N.E. 2d 334. The Court of Claims' interpretation of Section 3-1 of the Illinois Prompt Payment Act had the effect of precluding Plaintiff from obtaining statutorily mandated interest on the wrongfully withheld payments. Since an evidentiary hearing was never had on whether Plaintiff's claims were "properly approved" by the Department of Public Aid despite Plaintiff's request for such a hearing (R. at C129-32)., the Plaintiff, as in Rossetti, was herein deprived of due process.

Accordingly, this Court should reverse and order appropriate relief to Plaintiff, or reverse and remand the case for a determination on the merits, and/or an evidentiary hearing.

* * *

EXCERPTS FROM THE PLAINTIFF-APPELLANT'S PETITION FOR REHEARING, FILED IN THE APPELLATE COURT OF ILLINOIS

* * *

II.

THIS COURT'S DECISION THAT THE COURT OF CLAIMS IS THE ONLY FORUM THAT HAS JURISDICTION TO DETERMINE THE PLAINTIFF'S RIGHT TO THE INTEREST PENALTY UNDER THE PROMPT PAYMENTS ACT IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT OF ILLINOIS AND CLEARLY ERRONEOUS.

* * *

In this case, the Court of Claims, Circuit Court, and now this Honorable Court have completely ignored: (1) the clear and unequivocal language of the statute, mandating payment of the interest penalty; (2) the clear and conclusive legislative history, evincing the frustration of the Legislature at the State's continued refusal to abide by its statutory obligations; and (3) the repeated declarations of the Supreme Court of Illinois, citing this very law as the paradigmatic example of a legislative intent to impose liability on the State. More particularly, in City of Springfield v. Allphin (1980), 82 Ill.2d at 571, the Supreme Court specifically stated that "... (W)hen

the legislature intends to impose liability on the State for interest it affirmatively declares that the burden will fall on the sovereign. (E.g., Ill. Rev. Stat., (1976), ch. 127, par. 132.403)", specifically referring to the very statute relied upon by Plaintiff herein!

Significantly and determinatively, in In Re Special Education of Steven Walker, supra, 131 Ill.2d 300, 306, the Supreme Court determinatively stated:

> Also, in City of Springfield v. Allphin, 82 Ill.2d at 578, the court noted that when the legislature intends to impose liability on the State for interest, it will affirmatively declare that the burden will fall on the sovereign. Although the court in Allphin judged that the State was not liable for the interest under a predecessor of section 2-1303 (the previous version of the statute provided for the imposition of the interest against local governmental entities but did not include the language "any other governmental entity"), this court cited section 3 of "An Act to require prompt payments by the State of Illinois for goods or services" (Ill. Rev. Stat. (1977), ch. 127, par. 132.403) as an example of an act which sufficiently manifested the legislature's intent to waive

> sovereign immunity. The cited statute provides for 1% interest on bills unpaid by the State. Section 1 of that act provides that "[t]his Act applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General Assembly, for goods or services furnished to the State." (Ill. Rev. Stat. (1977), ch. 127, par. 132.401.)

Under such "clear and affirmative statutory language", Id. at 577, the Circuit Court and this Honorable Court were under a duty to apply the law as legislated, written, construed and interpreted by the Supreme Court of Illinois. As the Supreme Court stated in People ex rel. Harrod v. Illinois Courts Commission (1978), 69 Ill.2d 445, 472-473:

> (T)he judicial power in this State is vested solely in the courts. This power includes, among other things, the authority to judicially interpret and construe constitutional provisions and statutes when necessary. (People v. Bruner (1931), 343 Ill. 146, 157-158; Fergus v. Marks (1926), 321 Ill. 510, 414; People ex rel. Vanderburg v. Brady (1916), 275 Ill. 261, 263.) Inasmuch as the Commission is not a part of the tripartite power to interpret

statutory ambiguities or to compel judges to conform their conduct to any such interpretation. This limitation is particularly dictated inasmuch as this court is without the authority to review the correctness of the Commission's orders. To interpret the Constitution as granting the Commission such power would do violence to the intended constitutional scheme of government in this State. To grant the Commission such authority would interfere with an independent judicial system and would place trial judges in an untenable position. If, as here, the statutory interpretation of the Commission differed from that of the appellate courts, trial judges who followed, as mandated, the guidance of the courts of review, would be subject to sanction by the Commission. The "framers of the constitution sought to promote certainty and uniformity in the interpretation and declaration of the law. To that end they committee the exercise of these judicial functions to the judicial department." People v. Bruner (1931), 343 Ill. 146, 159.

Moreover, although in the context of constitutional rights, in Rossetti Contracting Co. v. Court of Claims (1985), 109 Ill. 2d 72, 78-80, the

Supreme Court reaffirmed Harrod, determinatively stating:

> In Harrod, we further reasoned that the Commission, inasmuch as it is not a part of the tripartite court system in this State, did not possess the power to interpret statutory ambiguities or to compel judges to conform their conduct to any such interpretation. We held that the function of the Commission was one of fact finding and that it should apply the facts to the determined law and not determine, construe, or interpret what the law should be. Therefore, in conclusion, we held that the Commission had exceeded its constitutional authority when, in determining whether petitioner's orders were without authority of law, it applied its own independent interpretation and statutory construction to petitioner's conduct.
>
> In the instant case, it is clear that the Court of Claims, like the Courts Commission, is not a court within the meaning of the judicial article but instead is a fact-finding body. It is also clear that this court had the authority and the responsibility, as the final arbiter of the Constitution, to determine whether the Court of Claims has acted to

unconstitutionally deprive a party of its right to due process. Rossetti is not presently seeking money damages against the State but simply a right to be heard on its alleged claim. We believe the Court of Claims, by interpreting section 14 to be applicable to Rossetti without allowing Rossetti an opportunity to be heard, has deprived Rossetti of due process of law. It is a basic tenet of constitutional law that an opportunity to be heard be granted at a meaningful time and in a meaningful manner. See Armstrong v. Manzo (1965), 380 U.S. 545, 552, 85 S.Ct. 1187, 1191, 14 L.Ed.2d 62, 66.

* * *

. . . This Honorable Court should not and cannot abdicate its responsibility and duty to cause the Court of Claims to apply the law as legislated, as written, and as (twice) interpreted by the Supreme Court of Illinois.

* * *

THE FINDING AND DECISION OF THE COURT THAT PLAINTIFF HAD RECEIVED A HEARING ON THE ISSUE OF WHETHER ITS INVOICES WERE "APPROVED" IS CLEARLY ERRONEOUS.

This Honorable Court ruled (Opinion at pp. 11-12):

Here, plaintiff was afforded a hearing on the issue of whether interest should be awarded on plaintiff's judgment. The court of claims heard arguments and allowed the parties to file supplemental briefs. The court then determined that,

> "While Claimant asserts that 'evidence has and will show that all invoices were approved for payment,' any such 'approval' of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant indicates an intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not approved."

The court determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise. Accordingly, the circuit court did not abuse its discretion in failing to

order the court of claims to provide an additional hearing.

Contrary to the aforesaid finding, Plaintiff was never afforded an evidentiary hearing by or before the Court of Claims on the issue of whether its invoices were "approved" (assuming, arguendo, that such a determination is even relevant since the failure to approve the invoices results in entitlement to the interest penalty, see Argument I, supra). The record is devoid of any evidence of such an evidentiary hearing by reason that no hearing (or even oral argument) occurred either on the motion for reconsideration of the initial award, or in the separate claim filed with respect thereto. Moreover, the determination of the Circuit Court that Plaintiff received a hearing was clearly limited to the hearing whereat Plaintiff proved 100% of its claims, without any evidence adduced in opposition, not a hearing with respect to the issue of approval.[1]

---

[1] It is noted that, contrary to the import of the Opinion (at p. 2), a substantial portion of the continuances before the Court of Claims were occasioned at the request of the State -- not the Plaintiff -- in a futile attempt to obtain evidence. It is further noted that the case was continued generally while Plaintiff pursued its legal right to

(continued...)

The record does support a factual determination that Plaintiff requested an evidentiary hearing on the issue of approval since that was the erroneous basis upon which the Court of Claims wrongfully avoided its clear and unambiguous statutory obligation to provide the interest penalty. The Plaintiff alleged that its invoices were in fact "approved", and requested an evidentiary hearing for the purpose of adducing evidence in support of its contention. This request was (twice) denied. Plaintiff received no evidentiary hearing. It was impossible for the Court of Claims, or for this Honorable Court to conclude, upon this record that "approval was lacking and no additional evidence from Plaintiff could prove otherwise". (Opinion, at p. 12). Plaintiff most respectfully submits that this conclusion is contrary to our most fundamental concepts of due process, and is directly contrary to the holding in Rossetti Contracting Co. v. Court of Claims (1985), 109 Ill. 2d 72.

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[1](...continued)
successfully obtain reinstatement to the program, which had been unjustly revoked by Defendants. Lastly, the State lost Plaintiff's evidence, not the State's evidence!

EXCERPTS FROM
PETITION FOR APPEAL AS A MATTER OF RIGHT,
OR, IN THE ALTERNATIVE,
FOR LEAVE TO APPEAL,
FILED IN THE SUPREME COURT OF ILLINOIS

* * *

POINTS RELIED UPON FOR REVERSAL

1. This was a suit to obtain a declaratory judgment, injunction, and writ of mandamus and/or certiorari to compel defendants to perform their duties and obligations as mandated by the Prompt Payment Legislation and as stated by this Court in Re Special Education of Steven Walker v. Cronin, (1989) 131 Ill.2d 300, 306 and City of Springfield v. Allphin, (1980) 82 Ill.2d, 571, 578, wherein this Court cited the aforesaid Prompt Payment Legislation as paradigmatic example of the legal imposition of liability for interest upon the State. The Circuit Court dismissed the Complaint, without affording or remanding the case for an evidentiary hearing, for lack of jurisdiction, and the Appellate Court affirmed, and Plaintiff therefore appeals, and requests leave to appeal.

2. In derogation of the clear and unequivocal mandate of the Illinois Prompt Payments Act requiring the State of Illinois to pay an interest penalty for the late payment of approved bills, or bills which the State official or agency fails to approve or disapprove within the time

limitations set forth in the Act, and the additional statutory obligation that "the Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act." (emphasis supplied). The Court of Claims refused to award Plaintiff interest upon the $340,681.00 of invoices that the Illinois Department of Public Aid had without justification and unlawfully failed to approve or disapprove, and withheld payment for services proved and found by the Court of Claims to be justly due and owing.

3. The basis for the Court of Claims' refusal was that the invoices were never "properly approved", completely ignoring and without any reference whatsoever to its statutory obligations requiring an award of an interest penalty when the State fails to approve or disapprove of bills and invoices for goods and services rendered thereto, and the fact established by the Opinion and Award in favor of Plaintiff that the invoices should have been approved and paid in the first instance.

4. Plaintiff respectfully submits that the Court of Claims' interpretations of its responsibility and the obligations of the Illinois Department of Public Aid under the Prompt Payments Act were clearly erroneous, contrary to the clear and unambiguous language of the statute,

and inconsistent with the pronouncements of this Court in City of Springfield v. Allphin, and In Re Special Education of Steven Walker.

5. The Court of Claims then denied Plaintiff's request for an evidentiary hearing to prove that the invoices were approved by the Illinois Department of Public Aid. Plaintiff respectfully submits that the aforesaid constituted a denial of due process under both the Illinois and United States Constitutions and was in conflict with this Court's decision in Rossetti Contracting Company, Inc. v. Court of Claims. See also Bio-Medical Laboratories, Inc. v. Trainer.

6. Upon review, the Court of Appeals, in an abdication of judicial responsibility, held that "the Circuit Court had no jurisdiction to make an independent determination of the parties' rights under the Prompt Payment Act", in complete conflict with this Court's opinion in People ex rel. Harrod v. Illinois Courts Commission and Rossetti Contracting Company, Inc. v. Court of Claims. Moreover, contrary to every pleading and brief submitted by the Plaintiff the Appellate Court found that the Plaintiff was seeking money damages and a review on the substantive merits of the Court of Claims decision. Both findings are incorrect. Lastly, notwithstanding the refusal to afford any evidentiary hearing on the issue of approval of the invoices, the

Appellate Court sua sponte incredibly found that Plaintiff did have a hearing on the issue of whether interest should be awarded on Plaintiff's judgment because "the Court of Claims heard arguments and allowed the parties to file supplemental briefs." Lastly, the Appellate Court found that the Court of Claims "determined from the evidence before it that approval was lacking and no additional evidence from Plaintiff would prove otherwise." In all due respect, Plaintiff respectfully submits that these findings have no support in the record.

7. Plaintiff only seeks his rights under Illinois law and the United States and Illinois constitutions, as interpreted by constitutional courts, and not a state agency and a legislative-created body that has been recalcitrant and obdurate with respect to affording claimants their statutory and constitutional rights, as this Court has found on all too many occasions. This is just one additional example of such incorrigible conduct. Such chicanery should not be countenanced by this Court.

8. The significance of the questions presented is substantial. It affects every vendor and potential vendor of goods and services to the State of Illinois, and every official and agency thereof. If this Court does

not allow review, the purpose and intent of the Prompt Payments Act, as expressed in the legislative history and by the language of the statute itself will be defeated, and without the statutory mandate and incentive to assure prompt payment, all vendors will be reluctant to deal with the State for fear of the same consequences that befell the Plaintiff -- financial ruin.

9. As importantly, the Court should allow review to reverse that portion of the decision abdicating the judicial responsibility to interpret the constitution and laws to administrative bodies and executive branch of government. While the vendors of this State do need a definitive interpretation of the legislation, it should not be by the Court of Claims, which should not be permitted to rewrite legislation by misinterpretation and misapplication. This is contrary to the separation of powers doctrine. Plaintiff respectfully submits that constitutional courts should assume jurisdiction and adjudicate these issues, and Plaintiff prays that the Court will do so in this case.

10. Lastly, the Plaintiff should not have been denied due process, particularly under a contrived conclusion by an Appellate Court. There was no evidentiary hearing afforded Plaintiff on the issue of the approval of its invoices, and to so

find is unconscionable and effects an injustice.

* * *

ARGUMENT

I.

PLAINTIFF SHOULD BE ALLOWED TO BRING THIS APPEAL AS A MATTER OF RIGHT BECAUSE A QUESTION UNDER THE CONSTITUTIONS OF THE UNITED STATES AND OF ILLINOIS ARISES FOR THE FIRST TIME IN AND AS A RESULT OF THE OPINION OF THE APPELLATE COURT.

The Appellate Court ruled (Opinion at pp. 11-12):

> Here, plaintiff was afforded a hearing on the issue of whether interest should be awarded on plaintiff's judgment. The court of claims heard arguments and allowed the parties to file supplemental briefs. The court then determined that,
>
> > "While Claimant asserts that 'evidence has and will show that all invoices were approved for payment,' any such 'approval' of invoices for services rendered in 1969-1971 had been rescinded prior to the filing of the original claim in 1972. We note that the enactment of the Prompt Payment Act was in 1975, effective July 1, 1976. Nothing in the legislative debates, supplied by Claimant indicates an

> intent to provide interest on invoices that were not 'approved' at the time of the passage of the legislation. Accordingly, even if the Claimant's invoices were subject to the legislation, it would not be entitled to interest since they were not approved."
>
> The court determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise. Accordingly, the circuit court did not abuse its discretion in failing to order the court of claims to provide an additional hearing.

Contrary to the aforesaid finding, Plaintiff was <u>never</u> afforded an evidentiary hearing by or before the Court of Claims on the issue of whether its invoices were "approved" (even though under the statute the <u>failure</u> to approve or disapprove the invoices results in entitlement to the interest penalty). The record is devoid of <u>any</u> evidence of such an evidentiary hearing by reason that no hearing (or even oral argument) occurred either on the motion for reconsideration of the initial award, or in the separate claim filed with respect thereto. The only hearing was the hearing whereat Plaintiff proved 100% of its claims, without any opposing evidence, not a hearing with

respect to the issue of approval. [2]

The record does support a factual determination that Plaintiff requested an evidentiary hearing on the issue of approval. The Plaintiff contended that its invoices were in fact "approved", and requested an evidentiary hearing for the purpose of adducing evidence in support of its contention. This request was (twice) denied. Plaintiff received no evidentiary hearing. It was impossible for the Court of Claims, or for the Appellate Court to conclude, upon this record that "approval was lacking and no additional evidence from Plaintiff could prove otherwise". (Opinion, at p. 12). Plaintiff most respectfully submits that this conclusion is contrary to our most fundamental concepts of due process, [Armstrong v. Manzo (1965), 380 U.S. 543, 552; Boddie v. Connecticut (1971), 401 U.S. 371, 377] and is directly contrary to this

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[2] It is noted that, contrary to the import of the Opinion of the Appellate Court (at p. 2), a substantial portion of the continuances before the Court of Claims were occasioned at the request of the State -- not the Plaintiff -- in a futile attempt to obtain evidence or comply with requested discovery. It is further noted that the case was continued generally while Plaintiff pursued its legal right to successfully obtain reinstatement to the program, which had been unjustly revoked by Defendants. Lastly, the State lost Plaintiff's evidence, not the State's evidence!

Court's holding in Rossetti Contracting Co. v. Court of Claims (1985), 109 Ill. 2d 72.

In addition, the Plaintiff respectfully submits that the entire issue of approval was an artifice created by the Court of Claims to avoid the mandate of the legislature. More particularly, the Prompt Payment Act has at all times required payment of the interest penalty irrespective of whether the bills or invoices have been "approved" (1976) or "properly approved in accordance with this Act" (1988), or whenever the State official or agency "fails to approve or disapprove" that bill within the thirty (30) day period provided for approval under Section 2 of every act.

Determinatively, the record is completely devoid of any "disapproval" of the Plaintiff's invoices. The Plaintiff was only informed that its invoices were being held "pending investigation". The Department never informed Plaintiff that its invoices were disapproved, it simply failed to pay the bills. Following this failure (not a "refusal" as indicated by the Appellate Court Opinion at p. 2),

the Plaintiff filed its claim.[3]

> Second, Plaintiff respectfully notes the manifest incongruity of the aforesaid opinion in that a wrongful refusal (much less a wrongful failure as in the instant case) to pay bills and invoices found justly due and owing will, under the Court of Claims' "reasoning", result in no interest being received by the aggrieved vendor. Apparently, it is only where the state officials (rightly or wrongly) affirmatively acknowledge the indebtedness will interest be awarded. Accordingly, the consequence of a wrongful denial or failure to

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[3] In rendering its opinion, the Court of Claims deceptively stated (Opinion, December 7, 1990, App. 29):

> "Ill. Rev. Stat. 1987, ch. 127, par. 132.403-1, relied upon by claimant, provides:
>
> > In any instance where a State official or agency is late in payment of a vendor's bill or invoice properly approved in accordance with this Act...the State official or agency shall pay the interest penalty... (emphasis supplied).

The Court of Claims intentionally ignored the operative statutory language, and thus the issue.

pay is the forfeiture of the statutorily mandated relief. This makes no sense.

Third, as is noted in the Court of Claims' Opinion, Plaintiff sought an evidentiary hearing whereat proof would be adduced that its bills and invoices were properly approved. Plaintiff never was afforded a hearing of any type affording the opportunity to prove that the purported "factual" basis for the Court of Claims' refusal to award interest. The Court of Claims' interpretation of the Illinois Prompt Payment Act had the effect of precluding Plaintiff from obtaining statutorily mandated interest on the wrongfully withheld payments. Since an evidentiary hearing was never had on whether Plaintiff's claims were "properly approved" by the Department of Public Aid despite Plaintiff's request for such a hearing (R. at C129-32), the Plaintiff, as in Rossetti, was herein deprived of due process.

II.

LEAVE TO APPEAL SHOULD BE GRANTED BY REASON OF THE GENERAL IMPORTANCE OF THE QUESTIONS PRESENTED.

This case is of general importance because this Court's decision will determine whether the

express and unequivocal provisions of the Prompt Payments Act will be complied with by the Court of Claims in rendering awards for all claims for all vendors doing business with the State of Illinois, i.e., whether "The Illinois Court of Claims shall, in its investigation of payments due claimants, provide for interest penalties as prescribed in this Act." The case will also determine whether the Court of Claims can avoid this unambiguous statutory mandate by ignoring both that obligation and its other statutory obligation to award such interest if the State official or agency fails to approve or disapprove of the bill for goods or services within the time limitations set forth in the Act, or is found to have improperly failed to approve or wrongfully disapproved, or can refuse to award interest on those bills it finds that the State official or agency has not "properly" approved without affording the vendors an opportunity for an evidentiary hearing to dispute those "findings".

Since 1976, the Illinois General Assembly has attempted to provide protection and a remedy to the vendors of the State as an incentive to provide goods and services without the concern that they may not get paid for a considerable period of time. As is manifested by this case, the Court of Claims has been recalcitrant, obdurate, and incorrigible with respect to its statutory obligations.

This Court's decision will be significant to all vendors of the State of Illinois, and will influence their willingness to provide goods and services to the State of Illinois.

III.

LEAVE TO APPEAL SHOULD BE GRANTED BECAUSE OF THE NEED FOR THE EXERCISE OF THE COURT'S SUPERVISORY AUTHORITY.

This case should be reviewed because of the need for the exercise of this Court's supervisory authority in several respects.

First, contrary to this Court's decision in People ex rel. Harrod v. Illinois Courts Commission (1978), 69 Ill.2d 440, 472-473, and Rossetti Contracting Company, v. Court of Claims, supra, the Appellate Court abdicated the judicial responsibility of interpreting the laws to a legislative body. The Appellate Court's decision allowed and authorized the Court of Claims to interpret the language of the Prompt Payments Act contrary to its plain meaning, which construction was contrary to the statements of this Court as to this statute in City of Springfield v. Allphin (1980), 82 Ill.2d 571, 578 and In Re Special Education of Steven Walker, (1989), 131 Ill.2d 300, 306.

Second, the Appellate Court deprived the petitioner due process

under the United States and Illinois Constitutions, when it erroneously found that Plaintiff had been afforded an evidentiary hearing on the issue of the approval of its invoices under the Prompt Payments Act. Even a cursory perusal of the record reveals that this finding simply is not true, and this Court should not countenance such a contrivance, in deprivation of Plaintiff's right to due process as established by this Court in Rossetti Contracting Company, Inc., supra. See also, Bio-Medical Laboratories, Inc. v. Trainor (1977), 68 Ill.2d 540, 548.

Lastly, the Court should accept this case for the purpose of enforcing its own precedent with respect to injunctions, mandamus, and certiorari in actions against or involving the State of Illinois and Court of Claims. This Court should review this decision for the purpose of declaring that all State officials and agencies, including the Court of Claims, are bound to provide the protections provided in United States and Illinois Constitutions, as well as adhere to and enforce the clear and unequivocal mandates of Illinois statutory law.

* * *

V.

THIS COURT'S DECISION THAT THE COURT OF CLAIMS IS THE ONLY FORUM THAT HAS JURISDICTION TO DETERMINE THE PLAINTIFF'S RIGHT TO THE INTEREST PENALTY UNDER THE

PROMPT PAYMENTS ACT IS IN CONFLICT WITH DECISIONS OF THE SUPREME COURT OF ILLINOIS AND CLEARLY ERRONEOUS.

The Appellate Court held, inter alia (Opinion 5 at pp. 5-8):

> Plaintiff sought to have the circuit court issue a declaratory judgment stating that under the Prompt Payment Act, plaintiff was entitled to an award of interest on the judgment it obtained in the court of claims. However, the court of claims had already decided this issue against the plaintiff. Moreover, the court of claims was the only forum which had jurisdiction to decide such a claim. ...
>
> * * *
>
> Clearly, the circuit court had no jurisdiction to make an independent determination of the parties' rights under the Prompt Payment Act.
>
> It was within the province of the court of claims to determine whether the above statutes were applicable to plaintiff's claim.
>
> * * *
>
> As we discussed above, the circuit court was without authority to make an independent

determination of the parties' rights. Because plaintiff failed to demonstrate a clear right to relief, the circuit court did not abuse its discretion by refusing to issue a writ of mandamus to either the members of the court of claims or the director of the Department of Public Aid.

Plaintiff most respectfully submits that a suit for declaratory judgment, that a writ of mandamus and/or certiorari to review and correct "an erroneous construction of a statute is not a suit against the State....", even if the result is "to compel the director of the state department and other similar officials to perform their duty to pay plaintiff....". Hilger v. Myers, supra, 114 Ill. App.2d at 482, citing People ex rel. Freeman v. Department of Public Welfare, (1028) 368 Ill. 505, 507. See also, Bio-Medical Laboratories v. Trainor (1977), 68 Ill. 2d 540.

In this case, the Court of Claims, Circuit Court, and then the Appellate Court have completely ignored: (1) the clear and unequivocal language of the statute, mandating payment of the interest penalty; (2) the clear and conclusive legislative history, evincing the frustration

of the Legislature at the State's continued refusal to abide by its statutory obligations; and (3) the repeated declarations of this Court, citing this very law as the paradigmatic example of a legislative intent to impose interest liability on the State. More particularly, in City of Springfield v. Allphin (1980), 82 Ill.2d at 571, this Court specifically stated that "... (W)hen the legislature intends to impose liability on the State for interest it affirmatively declares that the burden will fall on the sovereign. (E.g., Ill. Rev. Stat., (1976), ch. 127, par. 132.403)", specifically referring to the very statute relied upon by Plaintiff herein.

Significantly and determinatively, in In Re Special Education of Steven Walker, supra, 131 Ill.2d 300, 306, the Supreme Court determinatively stated:

Also, in City of Springfield v. Allphin, 82 Ill.2d at 578, the court noted that when the legislature intends to impose liability on the State for interest, it will affirmatively declare that the burden will fall on the sovereign. Although the court in Allphin judged that the State was not liable for the

interest under a predecessor of section 2-1303 (the previous version of the statute provided for the imposition of the interest against local governmental entities but did not include the language "any other governmental entity"), this court cited section 3 of "An Act to require prompt payments by the State of Illinois for goods or services" (Ill. Rev. Stat. (1977), ch. 127, par. 132.403) as an example of an act which sufficiently manifested the legislature's intent to waive sovereign immunity. The cited statute provides for 1% interest on bills unpaid by the State. Section 1 of that act provides that "[t]his Act applies to any State official or agency authorized to provide for payment from State funds, by virtue of any appropriation of the General Assembly, for goods or services furnished to the State." (Ill. Rev. Stat. (1977), ch. 127, par. 132.401.)

Under such "clear and affirmative statutory language", Id. at 577, the Circuit Court and Appellate Court were under a duty to apply the law as legislated, written, construed and interpreted by this Court. People ex rel. Harrod v. Illinois Courts Commission, supra, 69 Ill.2d at 472-473, and Rossetti

Contracting Co. v. Court of Claims, supra, 109 Ill. 2d at 78-80. See also, Pinkstaff v. Pennsylvania Railroad Company, (1964), 31 Ill.2d 516, 521, wherein this Court "granted leave to appeal to determine the propriety of the Appellate Court's construction of the Interest Act because this case presents questions not heretofore determined by this Court." Our case is analogous because the previous declarations of this Court were dicta.

In the instant appeal, albeit on statutory and not constitutional grounds, this Plaintiff seeks an interpretation and application of the applicable law by a court of competent jurisdiction. This Court should not and cannot abdicate its responsibility and duty to cause the Court of Claims to apply the law as legislated, as written, and as (twice) interpreted by this Court. Accordingly, it is this Court and not the Court of Claims that should make the determinations with respect to entitlement and retroactivity.

* * *

EXCERPTS FROM
MOTION FOR RECONSIDERATION
PRESENTED TO THE
SUPREME COURT OF ILLINOIS

* * *

In violation of the clear and unequivocal language of the Prompt Payment Act, and contrary to the legislative intent in enacting these laws manifesting Legislature's frustration with the State's failure to pay its bills on time and to comply with this statute (and the resultant unwillingness of vendors to provide goods and services), the Appellate Court abdicated the judiciary's responsibility and duty to interpret the laws of the State of Illinois to a non-judicial, legislative tribunal, i.e., the Court of Claims.

This Court has never countenanced such abdication of judicial responsibility [e.g., see People ex rel. Harrod v. Illinois Court's Commission (1978), 69 Ill.2d 440, 472-473 and Rossetti Contracting Company v. Court of Claims (1985), 109 Ill.2d 72, 78-80], and should not do so in this case.

In this case there is a clear and unequivocal law requiring the State to pay interest when it is late in paying or fails to approve or disapprove its vendor's bills or invoices for goods and services within the time required by law, and a mandate requiring the

Court of Claims to impose an interest penalty when the State fails to fulfill its statutory obligations.

This Court has the duty and responsibility to interpret and construe that law, not the Court of Claims, and, when, as in the instant case, those laws have been violated, to provide appropriate judicial relief.

In addition, the refusal of this Court to hear this case in essence and fact vitiates and "affirms the invalidity of the Statute" without guidance to the Legislature for amendment to implement its intentions.

* * *

In this case, the Illinois Court of Claims refused to comply with the clear and unequivocal mandates of the Illinois Prompt Payment Act, Ill. Rev. Stats. (1976), ch. 127, paras. 132.401, et seq., which since 1976 have required that vendors be paid an interest penalty for late payment if the applicable Illinois State official or agency "fails to approve or disapprove that bill (for goods and services) within the period provided for approval..." under the Prompt Payment Act.

In addition, the Prompt Payment Act was amended to require that "The Illinois Court of Claims shall, in its investigation of payments due

claimants, provide for interest penalties as prescribed in this Act." (P.A. 85-348, Sec. 1, eff. Jan. 1, 1988)

Significantly, this Court has twice specifically referred to this legislation as constituting a law imposing liability for interest upon the State. In Re Special Education of Steven Walker v. Cronin (1989), 131 Ill.2d 300, 306 and City of Springfield v. Allphin (1980), 82 Ill.2d 571, 578.

In derogation of the unambiguous legislation and prophetic pronouncements of this Court, although awarding Hyde Park $340,681.00 for medical laboratory services which the Illinois Department of Public Aid wrongfully failed to pay, the Court of Claims refused to award Hyde Park the statutorily mandated interest penalty upon the specious and unfounded assertion that the invoices were not "approved" under the Act, intentionally misinterpreting and ignoring the language of the statute requiring the imposition of the interest penalty if the State official or agency "fails to approve or disapprove that bill within the period provided for approval," and the incongruity of not awarding the interest penalty for bills that were wrongfully not paid. Moreover, when Hyde Park requested an evidentiary hearing to prove that its invoices were in fact approved (although this

not necessary to be eligible for the interest penalty), the Court of Claims refused to grant such a hearing.

Hyde Park filed a Complaint for Declaratory Judgment, Mandamus and Other Relief in the Circuit Court of Cook County, Illinois, requesting a declaratory judgment and the issuance of a writ of mandamus and/or certiorari to declare and compel the Illinois Department of Public Aid and Illinois Court of Claims to comply with their statutory and constitutional duties and obligations under the Illinois Prompt Payments Act and other legislation, and the Illinois and United States Constitutions. Significantly, Hyde Park did not seek a monetary judgment in the State court proceedings.

The Circuit Court held that it did not have jurisdiction to consider the case, notwithstanding this Court's decisions in Rossetti Construction Co. v. Court of Claims (1985), 109 Ill.2d 72, 78-80, and Bio-Medical Laboratories v. Trainor (1977), 68 Ill.2d 540, 458. The Circuit Court also found with respect to Hyde Park's constitutional claims, notwithstanding the undisputed evidence to the contrary, that Hyde Park had been afforded a full hearing with respect to the issue of the approval of its unpaid invoices. The complaint was dismissed.

The Appellate Court affirmed the

dismissal, misstating that "Plaintiff is seeking a monetary award from the Department of Public Aid under the Prompt Payments Act", and holding that the Circuit Court had no jurisdiction since all monetary claims against the State of Illinois "are within the exclusive jurisdiction of the Court of Claims". The Appellate Court further found (contrary to the record) that Hyde Park was not denied due process since it "was afforded a hearing on the issue of whether interest should be awarded a plaintiff's judgment," and that the Court of Claims "determined from the evidence before it that approval was lacking and no additional evidence from plaintiff could prove otherwise". This statement is simply not true.
The Appellate Court further held:

> It was within the province of the court of claims to determine whether the above statutes were applicable to plaintiff's claim. The court of claims determined that even if plaintiff's invoices were subject to the legislation, plaintiff would not be entitled to interest since the invoices were not properly approved at the time of the passage of the legislation. As we discussed above, the circuit court was without authority to make an independent determination of the parties' rights. Because plaintiff failed to demonstrate a clear right to

relief, the circuit court did not abuse its discretion by refusing to issue a writ of mandamus to either the members of the court of claims or the director of the Department of Public Aid.

The deliberate misstatement of Hyde Park's claims and the record are not only perversions of the process of our legal system, and an injustice to Hyde Park, these misstatements constitute and effect an avoidance of the statutory and constitutional issues involved in this case, and will impact upon every invoice for goods and services provided to the State of Illinois and every proceeding before the Court of Claims to obtain the interest penalty upon sums found justly due and owing.

Resolution of these issues by this Court is not only significant to Hyde Park, but to the State and all of its present and potential vendors; it is also significant to the proper administration and rule of law, and even the doing of justice.

* * *